

NATURAL RESOURCES AND ENVIRONMENT

Title 24

ECOSYSTEM PROTECTION AND DEVELOPMENT

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Chapter 01

ENVIRONMENTAL QUALITY ACT

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24.0101 Short title.

This chapter shall be known as the Environmental Quality Act.

History: 1972, PL 12-45 § 1.

Case Notes:

Consent decrees (pertaining to the American Samoa Environmental Quality Act, A.S.C.A. §§ 24.0101 et seq., and the Water Quality Standards, A.S.A.C. § 24.0201 et seq.) are binding only on the parties thereto and do not define or restrict the rights of the United States or of any private party, either with respect to the right to bring any action or to the merits of such action. *American Samoa Government v. StarKist Samoa, Inc.*, 16 A.S.R.2d 27 (1990).

24.0102 Policy.

(a) It is the public policy of this Territory and the purpose of this chapter to achieve and maintain such levels of air and water quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this Territory and facilitate the enjoyment of the natural attractions of this Territory.

(b) To these ends it is the purpose of this chapter to provide for a coordinated Territory-wide program of air and water pollution prevention, abatement, and control; and to provide a framework within which all values may be balanced in the public interest.

History: 1972, PL 12-45 § 2.

24.0103 Definitions.

(a) As used in this chapter:

(1) "Air pollutant" means any pollution agent or combination of such agents, including any physical, chemical, biological, radioactive substance or matter which is emitted into or otherwise enters the ambient air. Such term shall also include odorous substances and any precursors to the formation of any pollutant, to the extent that the agent or combination of such agents is identified by any Federal or Territory rules as precursors.

(2) "Air pollution" means the presence in the outdoor atmosphere of one or more air pollutants in such quantities and duration as is or tends to be injurious to human health or welfare, plant or animal life, or property, or would interfere with the enjoyment of life or property.

(3) "Air pollution emission source" means property, real or personal, which emits or may emit air pollution.

(4) "Chairman" means the Chairman of the Environmental Quality Commission or persons authorized to act on his behalf.

(5) "Clean Air Act" means the Federal Clean Air Act of 1963 as amended.

(6) "Commission" means the Environmental Quality Commission or its duly authorized agents.

(7) "Compliance plan" means a plan which includes a description of how a source proposes to comply with all applicable requirements pursuant to this chapter and includes a schedule of compliance and a schedule under which the permittee will submit progress reports to the commission.

(8) "Discharge" means the releasing, expelling, spilling, leaking or dumping of pollutants onto land or into the waters of American Samoa.

(9) "Emission" means a release, into the outdoor atmosphere, of air pollutants.

(10) "Executive secretary" means the executive secretary of the Environmental Quality Commission.

(11) "Hazardous air pollutant" or "HAP" means those hazardous air pollutants listed in section 112 (b), as amended, 42 United States Code 7412 (2), and any other pollutant designated by federal or territory rules as hazardous.

(12) "Major stationary source(s) of air pollution" or "major source" means an air pollution emission source or group of sources under the common control or command of the same owner or operator which emits or has the potential to emit 100 tons per year or more, considering controls, of any pollutant subject to regulation under the Federal Clean Air Act or the laws of this Territory.

(13) "Non-major source(s) of hazardous air pollution" or "non-major HAP source" means an air pollution emission source or group of sources under the common control or command of the same owner or operator which emits or has the potential to emit in the aggregate an amount greater than 10 tons per year of any hazardous air pollutant; no more than 10 tons per year of any hazardous air pollutant, including fugitive emissions; and no more than 25 tons per year in the aggregate of any combination of hazardous air pollutants, including fugitive emissions.

(14) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a pollution emission or discharge source.

(15) "Permit" means written authorization from the Chairman or, in the case of stationary air pollution source permits, the executive secretary, to construct, reconstruct, modify, relocate, or operate a pollutant discharge or emission source. A permit authorizes the permittee to cause or allow the discharge or emission of pollutants in a specified manner or amount, or to do any act, not forbidden by this chapter or by rules adopted pursuant to it, requiring review by the

Chairman or Executive Secretary of the Commission.

(16) "Person" means any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the territory, trust, estate, or any other legal entity.

(17) "Pollutant" means solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, hazardous wastes, biological materials, air pollutants, radioactive materials, oil, grease, wrecked or discarded equipment, industrial, municipal or other waste discharged into or upon the land, air or water. Dredge spoil, rock, sand, dirt and agricultural materials shall also constitute a pollutant when discharged into waters of American Samoa.

(18) "Pollution" means the presence in the outdoor environment of air pollution, water pollution, or one or more pollutants in such quantities as is or tends to be injurious to human health or welfare, plant or animal life, or the use and enjoyment of life, property, or the environment.

(19) "Pollution source" or "source" means any building, structure, facility, or installation from which there is or may be the discharge or emission of pollutants.

(20) "USEPA" means the United States Environmental Protection Agency.

(21) "Waters of American Samoa" includes all streams, lakes, ponds, rivers, bays, lagoons, navigable water, groundwaters, underground waters, and coastal waters.

(22) "Water pollution" means the presence in the water of visible floating materials, oil, grease, scum, foam or other materials which produce visible turbidity or settle to form deposits; or materials which produce color, odor or taste, either of themselves or in combination, or in the biota; or materials which induce undesirable aquatic life; or materials which are toxic or an irritant to humans, animals, plants, or aquatic life.

(b) For the purposes of this chapter, addition to or enlargement or replacement of pollution source, or any major alteration therein, shall be construed as construction, installation, or establishment of a new air or water pollution source.

History: 1972, PL 12-45 § 1, 2000, PL 26-22.

24.0104 Administration of chapter.

Except as specifically provided herein:

(a) The Chairman of the Environmental Quality Commission has the responsibility for the administration of this chapter.

(b) The Chairman shall administer the provisions of this chapter in accordance with the Commission's rules, orders, standards of air and water quality and classifications.

(c) The Chairman may delegate to any employee of the Commission such of his functions and duties as he deems necessary for the proper and efficient administration of this chapter.

History: 1972, PL 12-45 § 1, 2000, PL 26-22.

24.0105 Environmental Quality Commission-Establishment-Meetings.

(a) There is an Environmental Quality Commission referred to in this chapter as the Commission. The Commission consists of 5 members to be appointed by the Governor to serve for an indefinite period of time.

(b) The Commission shall meet at least 4 times per year at regularly scheduled times. A quorum of 3 members is necessary to conduct any business before the Commission. A majority vote of those present shall decide all issues before the Commission. A record of each meeting shall be taken, and the record shall be available for public inspection.

History: 1972, PL 12-45 § 1.

24.0106 Environmental quality commission-Powers and duties.

In addition to the other powers and duties conferred upon it by this chapter, the Commission is authorized and directed to:

- (1) adopt, amend and repeal rules implementing and consistent with this chapter;
- (2) hold hearings relating to any aspect of or matter in the administration of this chapter, and in connection therewith, compel the attendance of witnesses and the production of evidence;
- (3) issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings;
- (4) require access to records relating to emissions or discharges which cause, threaten to cause, or contribute to pollution;
- (5) secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise;
- (6) prepare and develop a comprehensive plan or plans, including administrative rules, for the prevention, abatement and control of pollution in this territory;
- (7) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;
- (8) encourage and conduct studies, investigations and research relating to and, water, and other forms of pollution and their causes, effects, prevention, abatement, and control;
- (9) determine by means of field studies and sampling the degree of pollution in the Territory;
- (10) establish air and water quality standards for the Territory;
- (11) collect and disseminate information and conduct education and training programs relating pollution in the Territory;
- (12) advise, consult, contract, and cooperate with other agencies of the Territory, industries and the federal government, and with interested persons or groups;
- (13) consult, upon request, with any person proposing to construct, install, or otherwise acquire pollution source or device or system, regarding any pollution problem which may be related to the source, device or system; nothing in any such consultation shall be construed to relieve any person from compliance with this chapter, rules in force pursuant thereto, or any other provision of law;
- (14) accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this chapter.
- (15) establish and administer, as necessary, Territory-wide pollution control permit programs.

History: 1972, PL 12-45 § 1, 2000, PL 26-22.

24.0107 Emission and discharge control requirements.

The Commission may establish such emission and discharge control requirements, by rule, as in its judgment may be necessary to prevent, abate or control pollution. Such requirements may be for the Territory as a whole or may vary from area to area, as may be appropriate to facilitate accomplishment of the purposes of this chapter, and to take account of varying local conditions.

History: 1972, PL 12-45 § 1, 2000, PL 26-22..

24.0108 Monitoring and reporting pollutants.

(a) The Commission may require the owner or operator of any potential source to establish, maintain, and submit such records, make such reports, install, use, and maintain such monitoring equipment or methods, sample such emissions or discharges in accordance with such methods

and procedures, and at such locations and intervals as the commission shall prescribe, and provide such information to the Commission as the Commission may reasonably require.

(b) The Commission may require the owner or operator of any stationary source discharging pollutants to install monitoring equipment or devices, conduct source tests and maintain records as the Commission may prescribe and submit periodic reports on the nature and amount of such discharges to the Commission.

History: 1972, PL 12-45 § 1, 2000, PL 26-22.

24.0109 Confidentiality of records-Exceptions-in Government usage.

(a) Any records, reports or information obtained by the Commission shall be government information available to the public for inspection, except that upon a showing satisfactory to the Commission by any person that records, reports, information or a particular part thereof, other than emission or discharge data, to which the Commission has access would, if made public, divulge production or sales figures, or methods, processes, or production unique to such person, or would otherwise tend to affect adversely the competitive position of such person by revealing trade secrets, the Commission shall consider such record, report, information, or particular portion thereof confidential. The contents of a permit issued pursuant to this chapter shall not be entitled to confidentiality protection.

(b) Nothing in this section may be construed to prevent the use of such records or information by the Commission in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere; provided, that such analyses or summaries do not identify any owner or operator or reveal any information otherwise confidential under this section.

(c) Nothing in this section may be construed to prevent disclosure of such report, record, or information to federal, territory, or local representatives as necessary for purposes of administration of any Federal, Territory, or local pollution control laws, or when relevant in any proceeding under this chapter.

History: 1972, PL 12-45 § 1, 2000, PL 26-22.

24.0110 Interpretation of chapter.

Nothing in this chapter may be construed to:

- (1) grant to the Commission any jurisdiction or authority with respect to air pollution existing solely within commercial and industrial plants, works, or shops;
- (2) affect the relations between employers and employees with respect to or arising out of any condition of air pollution;
- (3) limit the applicability of any law relating to sanitation, industrial health or safety;
- (4) abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property, or to maintain any action or other appropriate proceeding therefor.

History: 1972, PL 12-45 § 1, 2000, PL 26-22.

24.0115 Stationary air pollution source permits.

(a) The Commission may establish and operate a Territory-wide program under which a permit shall be required for the construction, reconstruction, operation of or modification to new and existing major stationary sources of air pollution and non-major stationary sources of hazardous pollution. Under this program a permit may also be required for non-major sources of all other pollutants. Permits issued to major stationary sources of air pollution and to non-major

stationary sources of hazardous air pollution shall require compliance with all applicable federal requirements and contain monitoring, recordkeeping and reporting requirements sufficient to insure compliance with the applicable federal requirements. All permit limitations, controls or requirements under this program shall be permanent, quantifiable and otherwise enforceable as a practical matter.

(b) The authority vested in the Commission shall include the power to delay or prevent any construction, reconstruction, modification, or operation of air pollution emission sources which, in the opinion of the Executive Secretary, may cause the ambient air pollution level in the locality of such construction, modification or operation to exceed limits for ambient concentration established by the American Samoa Territorial Implementation Plan promulgated pursuant to the Clean Air Act as amended (42 U.S.C. § 7401 et seq.), or which would, in the opinion of the Executive Secretary, violate any provision of any land use plan established by the American Samoa Territorial Implementation Plan.

History: 1972, PL 12-45 § 1, 2000, PL 26-22.

24.0116 Stationary air pollution source permits-Fees.

(a) The executive secretary shall set fees for permits issued pursuant to this chapter to be paid by the applicant at rates and schedules established by the Commission.

(b) All monies collected as fees shall be deposited in the Stationary Air Pollution Source Fund established pursuant to section 24.0117. The fees shall be at such a rate to ensure that the Fund has sufficient capital to adequately support and administer the permit program established pursuant to 24.0115.

History: 2000, PL 26-22.

24.0117 Stationary Air Pollution Source Fund.

There is established a fund to be known as the Stationary Air Pollution Source Fund which shall be maintained separate and apart from any other funds of the American Samoa Government, and shall be administered by the Executive Secretary. Independent records and accounts shall be maintained in connection therewith. All emission fees, fines, penalties, bail forfeitures, and other funds collected or received pursuant to this chapter shall be deposited in the Stationary Air Pollution Source Fund and shall be used for:

(a) the direct and indirect costs of administration and implementation of the permit program and related costs, and for providing staff and resources to: assist permit applicants with the application process; review and act upon permit applications; write permits; implement and enforce permit conditions including legal support; prepare guidance and rules; prepare emission inventories and monitor air quality; inspect facilities to ensure compliance and offer assistance with pollution prevention alternatives; provide technical assistance to permittees; administer the Fund, and perform any other duties needed to administer the permit program: or

(b) any other program, project, or expenditure that is designed to protect American Samoa's environment from pollution and degradation.

History: 2000, PL 26-22; **amd** 2018, PL 35-11.

24.0118 Permits for sources of pollution, or equipment causing or intended to prevent pollution.

(a) The Commission by regulation shall prohibit the construction, reconstruction or

modification of any new or existing sources of pollution, or the installation, modification, or use of any equipment, device or other article which it finds may cause or contribute to pollution or which is intended primarily to prevent or control the emission or discharge of water pollutants unless a permit therefore has been obtained from the commission.

(b) A person shall not construct, reconstruct or modify any new or existing sources of pollution, or install, modify or use any equipment, device or other article designated by regulation, capable of causing or contributing to pollution, without a permit from the Commission, or in violation of any conditions imposed by such permits.

History: 1972, PL 12-45 § 1, 2000, PL 26-22.

24.0119 Permits-Applications.

(a) Requests for permits shall be submitted to the Commission on permit application forms provided to applicants by the Commission.

(b) The Commission may require permit applications to be accompanied by compliance plans and certifications, other plans, specifications, monitoring data, and other information necessary to identify the source, levels of discharge or emissions, and the soil, water or air quality impacts to determine whether the proposed installations, modification, or operation will be in accord with applicable rules and standards.

(c) Every proposed stationary air pollution source permit or application therefor submitted by a major source or a non-major HAP source shall be subject to federal oversight. The Commission shall submit copies of such permit application to USEPA within 10 days of receipt of a complete permit application and shall resolve all concerns of USEPA prior to issuing a permit.

(d) Except for applications seeking modifications that the Executive Secretary deems to be minor modifications, for each application, renewal, or modification of a permit belonging to a major source or non-major HAP source, the Executive Secretary shall provide for public notice, an opportunity for public comments, and an opportunity for public hearing in accordance with section 24.0120.

History: 2000, PL 26-22.

24.0120 Stationary air pollution source permits-Public participation.

(a) Where public participation is deemed appropriate by the Executive Secretary or is required by law, the Executive Secretary shall notify the public of the availability in one location of all information on the subject matter, including all information submitted by the applicant, except for that deemed confidential, the Commission's draft permit and the Commission's analysis, and any other information deemed appropriate. Such notice shall be mailed to any interested person upon request and shall be published in a newspaper of general circulation which is printed and issued at least twice weekly.

(b) The Commission shall provide a period of not less than thirty (30) days following the date of the public notice during which time interested persons may submit written comments on the subject matter, permit application, the Commission's analysis and draft permit, and other appropriate considerations. The period for comment may be extended at the sole discretion of the Executive Secretary.

(c) The Executive Secretary, at his sole discretion, may hold a public hearing if such hearing would aid in a permit decision. Any person may request a public hearing. Hearing requests shall be in writing and shall be filed within the thirty (30) day comment period prescribed in paragraph (b) and shall indicate the interest of the party filing the request and the reasons why a hearing is

warranted. The Executive Secretary shall publish the public notice for a public hearing at least thirty days in advance of the hearing date.

History: 1972, PL 12-45 § 1, 2000, PL 26-22.

24.0121 Permits-Issuance.

(a) For new and existing major stationary sources of air pollution and non-major HAP sources, within 12 months of the receipt of any complete permit application, the Commission shall issue such permit unless it is determined that the proposed construction, reconstruction, operation or modification will not be in accordance with this chapter or rules and regulations promulgated under this chapter, in which case an order shall be issued for the prevention of such construction, reconstruction, operation or modification.

(b) For new and existing non-major sources of air pollution and all other sources of pollution, the Commission shall issue a permit within 90 days unless it determines that the construction, reconstruction, operation, or modification will not be in accordance with this chapter or the rules and regulations established pursuant thereto.

(c) The Commission may attach to a permit any reasonable conditions which, at the discretion of the chairman or the Executive Secretary, will ensure compliance with the rules and standards adopted pursuant to this chapter.

(d) In no case shall a stationary air pollution source permit issued pursuant to this chapter exceed five (5) years duration.

History: 1972, PL 12-45 § 1, 2000, PL 26-22.

24.0122 Permits-Refusal-Hearing and decision.

In addition to any other remedies available on account of the issuance of any order prohibiting any construction, reconstruction, operation or modification, and prior to invoking any such remedies, the person or persons aggrieved thereby shall, upon request in accordance with the rules of the Commission, be entitled to a hearing on the order. Following such hearing, the order may be affirmed, modified or withdrawn.

History: 1972, PL 12-45 § 1, 2000, PL 26-22.

24.0123 Permits-Judicial review.

The applicant and any person who participated in the public comment process, if provided, may obtain judicial review in the courts of this Territory of the final action on a permit issuance, significant modification or renewal application. This is in addition to judicial review otherwise available under 24.0160.

History: 2000, PL 26-22.

24.0124 Permits-Maintenance of items submitted on application.

Any features, machines or devices constituting parts of or called for by plans, specifications or other information submitted pursuant to 24.0119 shall be maintained in good working order.

History: 1972, PL 12-45 § 1, 2000, PL 26-22.

24.0125 Permits-Renewal, suspension, termination, modification or revocation.

The Commission shall provide, by rule for the termination, renewal, suspension, reopening,

modification or revocation and re-issuance of any permits which it may require pursuant to 24.0115 through 24.0127.

History: 1972, PL 12-45 § 1, 2000, PL 26-22.

24.0126 Commission not authorized to specify equipment.

Nothing in 24.0115 through 24.0127 shall be construed to authorize the Commission to require the use of machinery, devices or equipment from a particular supplier or produced by a particular manufacturer if the required performance standards may be met by machinery, devices, or equipment otherwise available.

History: 1972, PL 12-45 § 1, 2000, PL 26-22.

24.0127 Compliance with law.

The absence or failure to issue a rule or order pursuant to this section shall not relieve any person from compliance with any emission or discharge control requirements or with any other provision of law.

History: 1972, PL 12-45 § 1, 2000, PL 26-22.

24.0130 Inspection of modes of transportation.

The Commission may carry out a program of inspection and testing of all modes of transportation to enforce the plans applicable to emission standards when necessary and practicable and to control or limit the operation of motor vehicles and other modes of transportation when in the opinion of the Executive Secretary such modes of transportation are producing or pose an immediate danger of producing unacceptable levels of air pollution.

History: 1972, PL 12-45 § 1, 2000, PL 26-22.

24.0131 Inspection of buildings and other places.

Any duly authorized officer, employee or representative of the Commission may enter and inspect, during reasonable hours, any building or place, except a building primarily designed for and used exclusively for a private residence, for the purpose of investigating an actual or suspected, or potential source of pollution and ascertaining compliance or noncompliance with this chapter and the rules and regulations issued pursuant to it.

History: 1972, PL 12-45 § 1, 2000, PL 26-22.

24.0132 Refusing or obstructing entrance of authorized personnel prohibited.

No person may refuse entry or access to any authorized representative of the Commission who requests entry for purposes of inspection and who presents appropriate credentials; nor may any person obstruct, hamper, or interfere with any such inspection.

History: 1972, PL 12-45 § 1.

24.0133 Report to owner or operator when requested.

If the owner or operator of inspected premises so requests, he shall receive a report setting forth all facts found which relate to compliance status.

History: 1972, PL 12-45 § 1.

24.0134 Tests and samples-Responsibility of owner or operator.

(a) The Commission may conduct tests and take samples of actual or suspected pollutants, fuel, process materials, or other materials which affect or may affect emission or discharge of pollutants from any source.

(b) Upon request of the Commission, the person responsible for the source to be tested shall provide necessary holes in stacks, ducts or pipes, and such other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the emission or discharge of pollutants.

(c) If an authorized employee of the Commission, during the course of an inspection, obtains a sample of any pollutant, fuel, process material or other material, he shall give the owner or operator of the equipment or fuel facility a receipt for the sample obtained.

(d) The Commission may require the owner or operator of any source emitting or discharging pollutants to install monitoring equipment or devices, conduct such tests and take such samples as the Commission shall prescribe and submit periodic reports on the nature and amount of such discharges or emission to the Commission.

History: 1972, PL 12-45 § 1, 2000, PL 26-22.

24.0140 Variance-Application-Exception.

(a) Except as provided in subsection (c), any person who owns or is in control of any plant, building, structure, establishment, process, or equipment may apply to the Commission for a variance from rules or regulations.

(b) A variance, or a renewal of a variance, shall not be a right of the applicant or holder thereof but shall be in the discretion of the Commission.

(c) A person shall not apply for, nor shall the Commission grant, a variance from any federal requirement or from any of the stationary air pollution source permit program rules or regulations adopted pursuant to 24.0115 and this chapter.

History: 1972, PL 12-45 § 1, 2000, PL 26-22.

24.0141 Variance-Hearing-Decision.

(a) The Commission may grant a variance if, after public hearing on due notice, it finds that:

(1) the emissions or discharges occurring or proposed to occur do not endanger or tend to endanger human health or safety; and

(2) compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(b) No variance shall be granted pursuant to this section until the Commission has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

History: 1972, PL 12-45 § 1.

24.0142 Variance-Renewal.

(a) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance.

(b) No renewal may be granted except on application therefore, made at least 60 days prior to the expiration of the variance.

(c) Immediately upon receipt of an application for renewal, the Commission shall give public

notice of such application in accordance with rules and regulations of the Commission.

(d) If complaint is made to the Commission on account of the variance, no renewal thereof shall be granted unless, following a public hearing on the complaint on due notice, the Commission finds that renewal is justified.

History: 1972, PL 12-45 § 1.

24.0143 Variance-Limitation.

Any variance or renewal thereof shall be subject to the following limitations:

(a) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement, or control of the pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the Commission may prescribe.

(b) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the Commission, is requisite for the taking of the necessary measures. A variance granted on this ground shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

(c) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subsections (a) and (b), it shall be for not more than 1 year.

History: 1972, PL 12-45 § 1, 2000, PL 26-22.

24.0144 Variance-Judicial review.

(a) Any person adversely affected by a variance or renewal granted by the Commission may obtain judicial review by proceeding in the High Court of American Samoa.

(b) Notwithstanding any provision of 24.0157 through 24.0165, judicial review of the denial of a variance or denial of a renewal thereof may be had only on the ground that the denial was arbitrary or capricious.

History: 1972, PL 12-45 § 1.

24.0145 Limitation of application of emergency procedure.

Nothing in 24.0140 through 24.0145, and no variance or renewal granted pursuant to 24.0140 through 24.0145 shall be construed to prevent or limit the application of the emergency provisions and procedures of 24.0154 and 24.0155 to any person or his property.

History: 1972, PL 12-45 § 1.

24.0150 Notice of violation-Hearing.

(a) Whenever the Commission has reason to believe that a violation of any provision of this chapter, or rule or regulation adopted under this chapter, has occurred, it may cause written notice to be served upon the alleged violator or violators.

(b) The notice must specify the provisions of this chapter, or rule or regulation alleged to be violated, and the facts alleged to constitute a violation, and may include an order that necessary corrective action be taken within a reasonable time.

(c) Any such order becomes final unless, no later than 10 days after the date the notice and order are served, the person or persons named therein request in writing a hearing before the Commission. Upon such request, the Commission shall hold a hearing. In lieu of an order, the Commission may require that the alleged violator or violators appear before the Commission for a hearing at a time and place specified in the notice and answer the charges complained of, or the Commission may initiate further action pursuant to this section or 24.0166 through 24.0169.

History: 1972, PL 12-45 § 1.

24.0151 Violation-Order.

(a) If, after a hearing, the Commission finds that a violation or violations have occurred, it shall affirm or modify its order previously issued, or issue an appropriate order or orders for the prevention, abatement, or control of the emissions or discharges involved or for the taking of such other corrective action as may be appropriate.

(b) Any order issued as part of a notice or after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the emissions or discharges.

History: 1972, PL 12-45 § 1.

24.0152 Failure to comply with order-Injunction.

(a) In the event the offender fails to comply with the order issued by the Commission, the Commission, in addition to other remedies set out in this chapter, may apply to the High Court for an injunction requiring the offender to cease doing business until such time as the offender shall furnish definitive plans and specifications, satisfactory to the Commission, to show compliance with this chapter the rules and regulations pursuant to it and the order of the Commission.

(b) The High Court shall grant such injunction unless the High Court finds from a review of all evidence which was before the commission that the Commission acted arbitrarily or capriciously.

(c) When the offender furnishes the plans called for under this section, the Commission shall immediately petition the High Court to lift such injunction.

History: 1972, PL 12-45 § 1.

24.0153 Voluntary compliance.

Nothing in this chapter prevents the Commission from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

History: 1972, PL 12-45 § 1.

24.0154 Emergency order, hearing, and decision.

(a) Notwithstanding any other provision of this chapter, if the Chairman or Executive Secretary of the Commission finds that a generalized condition of pollution exists or that emissions or discharges of one or more pollution sources is causing imminent danger to human health, welfare, or the environment and that it creates an emergency requiring immediate action to protect human health, welfare, or the environment, the Chairman, or the Executive Secretary with the concurrence of the Governor, shall order persons causing or contributing to the pollution to reduce or discontinue immediately the emission or discharge of pollutants, and such order

shall fix a place and time not later than 24 hours thereafter for a hearing to be held before the Commission.

(b) Not more than 24 hours after the commencement of such hearing, and without adjournment thereof, the commission shall affirm, modify, or set aside the order of the Chairman or Executive Secretary.

History: 1972, PL 12-45 § 1, 2000, PL 26-22.

24.0155 Emergency restraining orders.

Notwithstanding any other provision of this chapter, the Commission, upon receipt of evidence that a pollution source or combination of sources is presenting imminent and substantial endangerment to the health and welfare of persons or the environment, may bring a suit to immediately restrain any person causing or contributing to such pollution.

History: 1972, PL 12-45 § 1, 2000, PL 26-22.

24.0156 Other powers of Governor and officers not limited.

Nothing in 24.0150 through 24.0156 may be construed to limit any power the Governor or any other officer may have to declare an emergency and act on the basis of such declaration if such power is conferred by statute or constitutional provision, or is inherent in the office.

History: 1972, PL 12-45 § 1.

24.0157 Hearings on rules and regulations.

No rule and no amendment or repeal thereof, shall take effect except after public hearing on due notice as provided in the Administrative Procedure Act, 4.1001 et seq.

History: 1972, PL 12-45 § 1.

24.0160 Judicial review of Commissions orders.

(a) Any person aggrieved by an order of the Commission may have judicial review thereof by filing a petition with the High Court of American Samoa no later than 20 days after being notified that the order has been entered. The petition shall seek an order by the High Court which directs the Commission to modify or withdraw its order affecting the petitioner.

(b) Relief shall be granted only when the High Court finds from a review of all the evidence which was before the Commission that the Commission acted arbitrarily or capriciously.

History: 1972, PL 12-45 § 1.

24.0165 Emergency orders not limited.

Nothing in 24.0157 and 24.0160 shall be construed to require a hearing prior to the issuance of an emergency order pursuant to 24.0154 and 24.0155.

History: 1972, PL 12-45 § 1.

24.0166 Pollution of air-Penalty.

(a) A person who violates any provision of this chapter, or any rule in force pursuant to it, relating to the emission of air pollutants, stationary air pollution source permit conditions, fees and filing requirements, inspections, entry or monitoring activities, or any order issued by the Executive Secretary, the Commission or its authorized representatives, shall be guilty of an

infraction and subject on account thereof to pay a fine not to exceed \$10,000 for each separate offense. Each day of violation constitutes a separate offense.

(b) In addition to any other remedy provided by this chapter, the Executive Secretary is authorized to impose by order administrative penalties for violations of this chapter or any permit requirement or regulation in force pursuant thereto not to exceed \$10,000 per day for each separate offense. An administrative penalty shall not be imposed without first providing the alleged violator with notice and opportunity for a hearing in accordance with the provisions of the Administrative Procedures Act, A.S.C.A. 4.1001 et seq.

(c) Any person who knowingly violates any stationary air pollution source permit rules adopted by the Commission pursuant to this chapter, including any condition in a permit or any fee or filing requirement, shall be guilty of a felony punishable by a fine not to exceed ten-thousand (\$10,000) dollars per day or by imprisonment for a term not to exceed 2 years, or by both, for each separate violation.

(d) Any person who knowingly makes any false material statement, representation or certification upon any form or in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method required by the Commission to be maintained under this chapter or the rules in force pursuant thereto, shall be guilty of a felony punishable by a fine not to exceed ten-thousand (\$10,000) dollars per day or by imprisonment for a term not to exceed 2 years, or by both, for each separate violation.

(e) The burden of proof or degree of knowledge or intent required under the laws of this Territory for establishing violations under this section shall be no greater than the burden of proof or degree of knowledge or intent required by the Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

(f) A civil penalty or criminal fine sought or agreed upon by the Commission under this section shall be appropriate to the violation.

(g) Any fines and penalties collected under this section shall be deposited in the Stationary Air Pollution Source Special Fund established pursuant to 24.0117.

History: 1972, PL 12-45 § 1; amd 1980, PL 16-90 § 36, 2000, PL 26-22.

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

24.0167 Pollution of water-Penalty.

Any person who violates any provision of this chapter, or any rule in force pursuant to it, relating to the discharge of water pollutants, shall be guilty of an infraction and upon conviction sentenced to pay a fine of not more than five-hundred (\$500) dollars for each initial separate violation, and not more than one-thousand (\$1,000) dollars for each subsequent separate violation.. Each day of violation constitutes a separate offense.

History: 1972, PL 12-45 § 1; amd 1980, PL 16-90 § 37, 2000, PL 26-22.

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

24.0168 Violation of confidential records provisions-Penalty.

Any person who willfully violates 24.0109 is guilty of an infraction and upon conviction, sentenced accordingly.

History: 1972, PL 12-45 § 1, and 1980, PL 16-90 § 38

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

24.0169 Enforcement of chapter, rules and regulations and orders not limited.

Action pursuant to 24.0166, 24.0167 and 24.0168 is not a bar to enforcement of this chapter, or rules in force pursuant to it, by injunction or other appropriate remedy, and the Commission shall have the power to institute and maintain in the name of this territory any and all such enforcement proceedings.

History: 1972, PL 12-45 § 1

Chapter 02

VILLAGE SOIL CONSERVATION LANDS

Sections:

24.0201 Policy.

24.0202 Authority of village council to enact ordinances.

24.0203 Effective date of ordinances.

24.0204 Abrogation of ordinances.

24.0201 Policy.

It is the policy of the government to promote the economic use and conservation of land, preserve and improve soil fertility, and prevent wasteful and unscientific use of soil resources.

History: 1962, PL 7-24.

Case Notes:

Consent decrees (pertaining to the American Samoa Environmental Quality Act, A.S.C.A. §§ 24.0101 et seq., and the Water Quality Standards, A.S.A.C. § 24.0201 et seq.) are binding only on the parties thereto and do not define or restrict the rights of the United States or of any private party, either with respect to the right to bring any action or to the merits of such action. *American Samoa Government v. Star Kist Samoa, Inc.*, 16 A.S.R.2d 27 (1990).

24.0202 Authority of village council to enact ordinances.

Each village council is authorized by majority vote of those present to enact land use ordinances which:

(1) prescribe soil conservation practices that must be followed when growing specified agricultural crops on any land in the village;

(2) prescribe soil conservation practices that must be followed for specified lands in the village regardless of the crop grown;

(3) limit, to the extent reasonably necessary to carry out the policy of this chapter, the agricultural use that may be made of specified lands in the village;

(4) provide for coordinated soil conservation programs on lands owned by different persons, and prescribe joint or community obligations with respect thereto;

(5) provide penalties for violating, and methods for enforcing, the ordinances, which may include action by the village when a landowner refuses to comply with an ordinance, and assessment against the landowner of the cost of village action.

History: 1972, PL 7-24.

24.0203 Effective date of ordinances.

A land use ordinance shall become effective when approved by the Secretary of Samoan Affairs.

History: 1972, PL 7-24.

24.0204 Abrogation of ordinances.

A land use ordinance may be abrogated by the Governor at any time if he finds that it is being improperly administered.

History: 1962, PL 7-24.

Chapter 03

DEPARTMENT OF MARINE AND WILDLIFE RESOURCES

Sections:

- 24.0301 Policy.**
- 24.0302 Definitions.**
- 24.0303 Department established-Budget.**
- 24.0304 Powers and duties.**
- 24.0305 Dealers records.**
- 24.0306 Fishermen's records.**
- 24.0307 Reports of processors.**
- 24.0308 Reports by wholesalers.**
- 24.0309 Confidentiality of records.**
- 24.0310 Enforcement.**
- 24.0311 Drift gillnet fishing prohibited.**
- 24.0312 Violations and penalties.**

24.0301 Policy.

It is the public policy of this Territory and purpose of this chapter to preserve, protect, perpetuate and manage the marine and wildlife resources within the Territory. This chapter is to be construed so as to implement such policy and purpose to the fullest extent.

History: 1987, PL 20-12 § 1.

24.0302 Definitions.

(a) As used in this chapter unless the context clearly requires otherwise:

(1) "Dealer" means any person or business entity engaged in the business of: buying, canning, curing, or preserving fish or shell fish; or manufacturing meal, oil, flour, protein concentrate, animal food or fertilizer from fish or shellfish.

(2) "Director" means the Director of Marine and Wildlife Resources.

(3) "Drift gillnet fishing" means any gillnet that is more than half a mile in length; and that enmeshes, entraps, or entangles any fish; and that is used or intended to be used or intended to be used while attached to any point of land or the seabed irrespective of whether the net is used or intended to be used while attached to any vessel.

(4) "Fish" means those species of the classes osteichthyes, condrichthyes and agnatha that shall not be fished for except as authorized by rule of the director. The term "fish" includes all stages of development and the bodily parts of fish species.

(5) "Department" means the Department of Marine and Wildlife Resources.

(6) "Shellfish" means those species of marine and fresh water invertebrates that shall not be

taken except as authorized by rule of the Director. The term “shellfish” includes all stages of development and the bodily parts of shellfish species.

(7) “Territory” means all Territorial areas, and all marine waters and fresh waters within a three-mile zone extending outward from the shoreline.

(8) “Wildlife” means all species of the animal kingdom whose members exist in a wild state, excepting “fish” and “shellfish”, that shall not be taken except as authorized by rule of the Director. The term “wildlife” includes all states of development and the bodily parts of wildlife species.

History: 1987, PL 20-12 § 1; 1988, PL 20-62; 1989, PL 21-20.

24.0303 Office established-Budget.

There is created within the Executive branch of the government an Office of Marine and Wildlife Resources. The head of that office is a Director appointed by the Governor and confirmed by the Legislature. An office budget shall be included in the Governor’s annual budget submitted to the Legislature.

History: 1987, PL 20-12 § 1.

24.0304 Powers and duties.

(a) The office has the following powers and duties:

(1) manage, protect, preserve and perpetuate the marine and wildlife resources in the Territory;

(2) prepare and develop a comprehensive plan or plans for the management, protection and preservation of marine and wildlife resources in the Territory;

(3) collect, analyze, and disseminate data and information relating to the marine and wildlife resources in the Territory;

(4) keep records necessary to monitor and regulate the commercial and recreational fisheries;

(5) encourage and conduct studies, investigations and research relative to commercial and recreational fisheries and wildlife and natural resources;

(6) in coordination with the local government, conduct education and training programs relating to the management and preservation of marine and wildlife resources in the Territory;

(7) adopt and amend rules or regulations implementing and consistent with this chapter to protect, preserve and perpetuate marine and wildlife resources in the Territory;

(8) issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings;

(9) hold hearings relating to any aspect or matter in the administration of this chapter, and in connection therewith, compel the attendance of witnesses and the production of evidence; and

(10) accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this chapter.

(b) Assent to Federal Aid in Sport Fish Restoration Act-powers and duties.

The Territory of American Samoa hereby assents to the provisions of the act of the congress of the United States which was approved on August 9, 1950, known as Public Law 681-81st Congress, Chapter 658-Second Session and popularly known as the Federal Aid in Sport Fish Restoration Act. The Department of Marine and Wildlife Resources is authorized, empowered and directed to perform such acts as may be necessary to the conduct and establishment of cooperative fish restoration projects as defined in said act and rules and regulations promulgated

by the secretary of the interior thereunder; and no funds accruing to the Territory of American Samoa from license fees paid by fishermen shall be diverted for any other purpose than the administration of the Department of Marine and Wildlife Resources and for the protection, propagation, preservation, and investigation of fish and game.

(c) Assent to Federal Aid in Wildlife Restoration Act-powers and duties.

The Territory of American Samoa hereby assents to the provisions of the act of the congress of the United States which was approved on September 2, 1937, known as Public Law 415, 75th Congress. First Session and popularly known as the Federal Aid in Wildlife Restoration Act. The Department of Marine and Wildlife Resources is authorized, empowered and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife restoration projects as defined in said act of Congress in compliance with said act and rules and regulations promulgated by the Secretary of the Interior thereunder; and no moneys accruing to the Territory of American Samoa from license fees paid by hunters shall be diverted for any other purpose than the administration of the Department of Marine and Wildlife Resources.

(c) Reservation of Rights. The Territory of American Samoa does not by the passage of sections 24.0304 (b) and (c) or by the consent therein given, surrender to the Congress of the United States or any department of the government of the United States any of those rights or entitlements of the chiefs or the people which are guaranteed to them or retained by them under the following laws: 1) the Cession of Tutuila and Aunu'u, 2) the Cession of Manu'a Islands and 3) Title 48 U.S.C. Sections 1661 and 1662.

History: 1987, PL 20-12 § 1; 2001, PL 27-7.

24.0305 Dealers records.

(1) Every dealer shall make a legible record in the form of a receipt in triplicate on forms to be furnished by the department.

(2) The receipt shall show:

- (a) the weight and number of each species of fish or shellfish received;
- (b) the name of the fisherman providing the fish or shellfish;
- (c) boat name and registration number, if applicable;
- (d) the name of the dealer;
- (e) the date of receipt;
- (f) the price paid per species;
- (g) the type of fishing gear used;
- (h) whether the fish or shellfish are intended for sale in fresh, frozen or in processed form;
- (i) which fish or shellfish were taken within and outside the territorial waters; and
- (j) other statistical information as the department may require.

(3) The original signed copy of the receipt shall be delivered to the fisherman at the time of the purchase or receipt of the fish or shellfish. The duplicate copy shall be kept by the dealer or person receiving the fish or shellfish for a period of six months and shall be available for inspection at any time within that period by the department. The triplicate copy shall be delivered to the department on or before the sixteenth day of each month.

History: 1987, PL 20-12 § 1; 1988, PL 20-62.

24.0306 Fishermen's records.

Every fisherman who sells fish or shellfish taken from the waters of the Territory or brought into the Territory in fresh or frozen condition to persons not licensed to sell fish shall fill out the

receipt required by section 24.0305 and shall be subject to the sales tax imposed by the government.

History: 1987, PL 20-12 § 1.

24.0307 Reports of processors.

Each fish processor shall, on or before the fifth day of each calendar month, file with the department a written report on such form as may be prescribed containing a statement of the amount of fish or shellfish received at each of its plants during the preceding calendar month. The report shall also state the amounts of fish or shellfish packed and the number and size of the containers of fish, fishery products and byproducts packed, produced or reduced at each plant during the preceding calendar month.

History: 1987, PL 20-12 § 1; 1988, PL 20-62.

24.0308 Reports by wholesalers.

Any person operating under a wholesale fish dealers license shall report to the department on the 5th day of the month the total amount of fresh fish and shellfish, in pounds, purchased, received, or taken by him.

History: 1987, PL 20-12 § 1; 1988, PL 20-62.

24.0309 Confidentiality of records.

The receipts, reports, or other records filed with the department and the information contained therein, shall be confidential, and the records shall not be public records, and the information contained in the records shall be compiled or published as summaries, so as not to disclose the individual record or business of any person.

History: 1987, PL 20-12 § 1; 1988, PL 20-62.

24.0310 Enforcement.

(a) The Director and such department employees as the Director designates shall have the authority to issue citations, collect fines, impound vessels and equipment, and make arrests for violations of this chapter and any rules or regulations hereunder.

(b) Persons arrested shall be taken before the next sitting of the district court if either:

(1) the person demands an immediate appearance in court, or

(2) the person refuses to sign the citation to give his written promise to appear in court as required by law or regulation.

(c) Upon sworn information from witnesses or department employees, the District Court Judge shall issue process for arrest of any person charged with violation of any provision of this chapter or any regulations issued hereunder.

History: 1987, PL 20-12 § 1; 1988, PL 20-62.

24.0311 Drift gillnet fishing prohibited.

It is unlawful for:

(1) any person to engage in drift gillnet fishing within the Territorial waters of American Samoa;

(2) any person to sell or offer for sale any nets to be used for drift gillnet fishing;

(3) any person to sell or offer for sale any fish taken from the Territorial waters of American Samoa by drift gillnet fishing;

(4) any fish processor to process or otherwise possess any fish taken by drift gillnet fishing;

(5) any fishing vessel engaged in drift gillnet fishing or any companion to fuel or escort vessels that assist or may assist in refueling a drift gillnet vessel covered by this section to fuel or otherwise stop at any of the ports of American Samoa, except in the event of emergency;

(6) any person to sell or offer for sale fuel to any vessel engaged in drift gillnet fishing.

History: 1989, PL 21-20

24.0312 Violations and penalties.

(a) Any person who violates any provision of this chapter or of rules promulgated under this chapter shall be guilty of a class B misdemeanor. A business entity found in violation of this chapter or of rules promulgated under this chapter shall be fined not less than \$1,000 per violation except that a person who violates 24.0311 shall be fined not less than \$50,000 per violation.

(b) Any property taken or possessed in violation of any provisions of this chapter or of the rules promulgated under this chapter including the vessel and the fish caught, may be subject to forfeiture to the government pursuant to a civil proceeding in the High Court of American Samoa with monies received from the sale thereof to be used for the purpose of policing and enforcement by the Office of Marine and Wildlife Resources.

(c) Any person in possession of a catch that appears to have been caught in a drift gillnet and that either the local or federal inspector has reasonable grounds to believe was caught in a drift gillnet shall be presumed to have been taken from the waters of American Samoa.

History: 1987, PL 20-12 § 1; 1989, PL 21-20.

Chapter 04

BUNCHY TOP LAW

Sections:

- 24.0401 Definitions.**
- 24.0402 Eradication of bunchy top-Responsibility of occupiers of land.**
- 24.0403 Notice to director of existence of bunchy top.**
- 24.0404 Moving or removing infected plants.**
- 24.0405 Quarantine-Notice-End of quarantine.**
- 24.0406 Quarantined land-Duty of occupiers of land.**
- 24.0407 Notice to comply with chapter.**
- 24.0408 Right of entry-Recovery of costs.**
- 24.0409 Inspection and treatment without notice-Occupier's liability.**
- 24.0410 Appointment of inspectors.**
- 24.0411 Service of notice or other documents.**
- 24.0412 Notice-Noncompliance- Penalty.**
- 24.0413 Obstruction of director or inspector-Penalty.**

24.0401 Definitions.

In this chapter, unless the context otherwise requires:

(a) “Banana”, “plantain”, and “hemp”, when used collectively, mean and include all plants of the genus *Musa* and extend to the seeds and to every part of the plants, whether attached to the plants or separated therefrom.

(b) “Director” means the Director of Agriculture.

(c) “Inspector” means an inspector appointed under this chapter.

(d) “Occupier”, in relation to any land, means any person in actual occupation of the land or entitled to occupy the land, and includes the owner of the land and any other person in receipt of, or entitled to the receipt of, the rents and profits thereof and any agent or trustee of an occupier of the land.

(e) “Plant” includes any plant or tree in any state of growth.

History: 1962, PL 7-16.

24.0402 Eradication of bunchy top-Responsibility of occupiers of land.

Every occupier of land on which there are any banana, plantain, or hemp plants infected with bunchy top shall at all times do all things necessary to eradicate bunchy top from such land and to prevent the spread thereof.

History: 1967, PL 7-16.

24.0403 Notice to Director of existence of bunchy top.

If it comes to the knowledge of any occupier of land that there is any banana, plantain, or hemp plant infected with bunchy top on his land, he shall immediately notify the Director of the existence of such bunchy top.

History: 1962, PL 7-16.

24.0404 Moving or removing infected plants.

The occupier of any land on which there is any banana, plantain, or hemp plant infected with bunchy top may not remove it from the land, or move it from one part of the land to another part, except with the prior written consent of the Director or an inspector.

History: 1962, PL 7-16.

24.0405 Quarantine-Notice-End of quarantine.

(a) The Director may declare any area in which there are banana, plantain, or hemp plants infected with bunchy top to be a quarantine area within the meaning of this chapter.

(b) Notice of the quarantine shall be delivered to the pulenuu of the village in which or near which the area is located.

(c) If it appears to the director that bunchy top has been eradicated in any area so declared to be a quarantine area, he may end the quarantine as to the whole or any part of the area, and shall give notice of such action to the pulenuu.

History: 1962, PL 7-16.

24.0406 Quarantined land-Duty of occupiers of land.

(a) Every occupier of land within a quarantine area shall keep the ground surrounding every banana, plantain, or hemp plant free and clear of all weeds and other plant growths for a distance of not less than 6 feet.

(b) Every occupier of land within a quarantine area on which there is any banana, plantain, or hemp plant infected with bunchy top shall dig the plant out of the ground and split the stem lengthwise along the whole or its length into at least 4 pieces and slice the underground portion of the plant into sections not exceeding 1 inch in thickness.

History: 1962, PL 7-16.

24.0407 Notice to comply with chapter.

The Director or an inspector authorized by him may, by notice to an occupier of any land in a quarantine area, require the occupier to comply with any requirements of this chapter, and in the notice may specify the work to be done and the time within which and manner in which such requirements and work shall be complied with.

History: 1962, PL 7-16.

24.0408 Right of entry-Recovery of costs.

(a) In any case where an occupier of land fails or neglects to comply with the requirements of this chapter, the Director or any inspector or other person authorized by him may enter upon the land and comply with such requirements.

(b) All moneys reasonably expended by or on behalf of the Director under this section as a consequence of failure or neglect of the occupier to comply with the requirements of this chapter shall be recoverable from any occupier by proper action in the High Court of American Samoa.

History: 1962, PL 7-16.

24.0409 Inspection and treatment without notice-Occupier's liability.

(a) The Director or any person authorized by him may, at any time and without having first served any notice under 24.0407, enter upon any land, whether in a quarantine area or not, to ascertain if there is any banana, plantain, or hemp thereon infected with bunchy top, and may dust, spray or otherwise treat the land or any banana, plantain, or hemp thereon to prevent the spread of bunchy top.

(b) When treatment is carried out on land without notice to the occupier to carry out such treatment, the occupier shall, nevertheless, be liable to pay the costs of such treatment.

History: 1962, PL 7-16.

24.0410 Appointment of inspectors.

The Director may from time to time appoint inspectors and define their powers and functions.

History: 1962, PL 7-16.

24.0411 Service of notice or other documents.

(a) Any notice or other document required to be served on any person under this chapter may be served by delivering it to that person or by mailing it by first class mail to that person at his last known residence.

(b) A notice or other document so mailed shall be deemed to have been served at the time when the letter would in ordinary course reasonably be expected to be delivered.

(c) If the Director or any inspector considers that any person would be more likely to learn of the contents of any notice or document if it were left on any land of which he is the occupier, or if such person is absent from American Samoa or is deceased, the notice or document may be

served by affixing it on some conspicuous part of land of which he is the occupier.

History: 1962, PL 7-16.

24.0412 Notice-Noncompliance-Penalty.

Without prejudice to any other liability under this chapter, any person who fails or neglects to comply with the requirements of any notice lawfully served on him pursuant to the provisions of this chapter, or, after it has come to his knowledge that there is any banana, plantain, or hemp infected with bunchy top on his land, fails to notify the Director thereof, shall be guilty of a misdemeanor and shall be fined not more than \$50.

History: 1962, PL 7-16.

24.0413 Obstruction of Director or inspector-Penalty.

Any person who obstructs, hinders, or attempts to obstruct or hinder the Director or any inspector or other person in making any inspection of any land or in carrying out any measures authorized by this chapter, shall be imprisoned for a period not to exceed 6 months, or fined in an amount not to exceed \$200, or both.

History: 1962, PL 7-16.

Chapter 05

COASTAL MANAGEMENT PROGRAM

Sections:

- 24.0501 Title.**
- 24.0502 Establishment of Coastal Management Program.**
- 24.0503 Designation of coastal zone and special management areas.**
- 24.0504 Program purpose and responsibilities.**
- 24.0505 Land use permit.**
- 24.0506 Adoption of rules-Appeals.**
- 24.0507 Federal consistency rules.**
- 24.0508 Prohibited acts.**
- 24.0509 Violations and penalties.**
- 24.0510 Environmental restoration fund.**

24.0501 Title.

This chapter is designated and may be cited as the “American Samoa Coastal Management Act of 1990.

History: 1990 PL 21-35.

24.0502 Establishment of coastal management program.

(a) There is established in the Executive branch, within the Office of Development Planning, an office to be known as the “American Samoa Coastal Management Program” (hereinafter “ASCMP”).

(b) The Office of Development Planning is the designated Territorial agency, as required by federal law, for the administration and implementation of ASCMP, and shall receive, manage, and account for all coastal management grants, contracts, cooperative agreements and other

funds received and dispensed.

History: 1990, PL 21-35.

24.0503 Designation of coastal zone and special management areas.

(a) Coastal zone management area. The Islands of Tutuila and Aunu'u, the Manu'a Islands, Swains Island, Rose Island, and all coastal waters and submerged lands included within the boundaries of the Territorial sea are hereby designated as the coastal zone management area of American Samoa, (hereinafter "Coastal Zone"), and are subject to the provisions of this chapter. Excluded from the coastal zone management area are lands the use of which is by law subject solely to the discretion of or which is held in trust by the federal government, its officers or agents.

(b) Special management areas. Due to their unique and valuable characteristics and to the imminent threat from development pressures, Pago Pago Bay, and the "pala" or wetland areas of both Nu'uuli and Leone, are hereby designated as "special management areas" under this chapter. The Director of Development Planning is directed to delineate boundaries and promulgate rules for special management areas, in accordance with the Administrative Procedures Act, 4.1001 A.S.C.A. et. seq., that impose the highest practical standards for the preservation, restoration, and management of their ecological, commercial, recreational, and esthetic values. Future special management areas may be designated by the Governor, following a nomination process and designation pursuant to the Administrative Procedures Act, 4.1001 et seg.

History: 1990, PL 21-35.

24.0504 Program purpose and responsibilities.

The general purpose of ASCMP is to provide effective resource management by protecting, maintaining, restoring, and enhancing the resources of the coastal zone. This shall be accomplished through:

- (1) protection of unique areas and resources, including wetlands, mangrove swamps, aquifer recharge areas, critical habitat areas, streams, coral reefs, watersheds, near shore waters, and designated or potential historic, cultural or archaeological sites, from destructive or inappropriate development;
- (2) development of strategies to cope with sea level rise and other coastal hazards, plus all other cumulative impacts on land, air, and water resources;
- (3) promotion of the public's health, safety, and economic welfare in the conservation of wildlife, marine, and other natural resources;
- (4) coordination and integration of planning, monitoring, and enforcement activities of all government agencies whose activities impact the coastal zone;
- (5) establishment of criteria for major facility siting and guidelines for the priority use of public shorefront property;
- (6) improvement and expansion of recreation opportunities and shorefront access for all residents and visitors; and
- (7) establishment of criteria and procedures for an environmental impact assessment process.

History: 1990, PL 21-35.

24.0505 Land use permit.

- (a) A land use permit shall be required for all uses, developments, or activities which impact

the coastal zone.

(b) The Office of Development Planning is vested with exclusive authority to designate uses subject to land use permit requirements, and will approve, approve with conditions, or disapprove all land use permit applications according to permit review rules. For purposes hereof, the term “impact the American Samoa coastal zone” is defined as having direct and significant impacts on coastal waters and adjacent lands as defined in section 304 (1) of the federal Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451-1464).

(c) Where there is reasonable cause to believe that a violation of this chapter, or rule adopted pursuant to it, has occurred, officials designated by the Director of Development Planning may issue a stop order to the person responsible for the violation. The stop order must detail the facts alleged to constitute a violation and may include an order that necessary corrective action be taken within a reasonable time. In the event of the failure of the person or persons to comply with the order, the Director of Development Planning may apply to the High Court for an injunction.

History: 1990, PL 21-35.

Case Notes:

A preliminary injunction is unwarranted when an environmental organization fails to plead specific harm to itself or its members and when it did not seek a stop order from the Territorial Development Planning Office. A.S.C.A. §§ 4.1040, 24.0505(c). *Le Vaomatua v. American Samoa Government*, 23 A.S.R.2d 11 (1992).

24.0506 Adoption of rules-Appeals.

(a) The Director of Development Planning, after public hearings, shall adopt, pursuant to this chapter and the Administrative Procedures Act, 4.1001 A.S.C.A. et seq., rules as are deemed necessary for the efficient and effective administration of this chapter. The rules shall be promulgated and take effect as soon as possible, and not later than one year after the enactment of this chapter. These rules, at a minimum, shall:

(1) establish a streamlined land use permit system that integrates the permitting requirements of each of the territorial agencies concerned with environmental management, and determines a land use permit fee schedule commensurate with the cost of administering the permit review system;

(2) establish procedures for the conduct of appeals by aggrieved parties for a decision reached or conditions imposed on a land use permit application.

(b) Notwithstanding this or any other provision of law or rule, the rules promulgated as chapter 26.02 of the American Samoa Administrative Code (Executive Order 12-88) shall continue in effect until such time as the rules required under this section are promulgated as final.

History: 1990, PL 21-35.

Case Notes:

Existing coastal management rules and regulations were not nullified by the Development Planning Office's failure to formally promulgate new, statutorily-required rules for administering the American Samoa Coastal Management Program. A.S.C.A. § 24.0506(a)-(b); A.S.A.C. §§ 26.0201 et seq. *Le Vaomatua v. American Samoa Government*, 23 A.S.R.2d 11 (1992).

24.0507 Federal consistency rules.

The Director of Development Planning, shall adopt pursuant to this chapter and the Administrative Procedures Act, 4.1001 A.S.C.A. et seq., rules as are necessary to govern review of any activity, program, project, license, permit, or funding of the United States Government

within the Territory to ensure that federal action is consistent with the policies and goals of this chapter, pursuant to section 307 of the federal Coastal Zone Management Act of 1972, as amended.

History: 1990, PL 21-35.

24.0508 Prohibited acts.

(a) It shall be a violation of this chapter for any person, including corporations, to fill, make deposits on, or in any fashion create or attempt to create, artificial land, or augment or add to the natural shoreline of any coastal area without a land use permit or in violation of a permit. This section applies to principals, their agents, and contractors.

(b) Any person, including any corporation, who violates this section is guilty of a class A misdemeanor, and shall also be subject to civil fines according to the provisions of 24.0509 of this chapter.

History: 1990, PL 21-35.

24.0509 Violations and penalties.

(a) Except as otherwise specifically provided in 24.0508, any person who violates any provision of this chapter or any rules or order issued hereunder is guilty of a civil offense and, upon conviction, shall be subject to a civil fine imposed by the High Court of American Samoa not to exceed \$5,000 per violation. Corporations shall also be subject to a civil fine imposed by the High Court of American Samoa not to exceed \$10,000 per violation.

(B) For the purposes of this section, a violation shall constitute an offense committed on any single calendar day, and offenders may be cited on subsequent violations if the objectionable practice or activity persists beyond one calendar day and is not righted or stopped.

(b) In addition to the foregoing and in order to deter violations of the provisions of this chapter, or rules issued pursuant to this chapter, the attorney general may maintain an action in the High Court of American Samoa for exemplary damages, the amount of which is left to the discretion of the Court, against any person who intentionally and knowingly violates any provision of this act or those rules.

(c) Any individual or corporation who knowingly and willfully makes a false statement, representation, or certification in any application for a permit, or in any record, plan or other document filed or required to be maintained under this chapter or rules issued hereunder, or in any permit or order issued pursuant to this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained pursuant to this chapter or rules issued hereunder or any permit or order issued pursuant to this chapter, shall be subject to permit revocation or suspension and is guilty of a class B misdemeanor and upon conviction shall be sentenced accordingly.

History: 1990, PL 21-35.

24.0510 Environmental restoration fund.

(a) There is established an Environmental Restoration Fund that shall be used to further the monitoring, enforcement, hazard mitigation, and environmental restoration duties of the ASCMP. The fund shall be managed by the Director of Development Planning who shall submit financial reports at the end of each fiscal year to the Governor and Legislature.

(b) Fines collected pursuant to this chapter are to be deposited in the general fund.

(c) All money or proceeds donated or bequeathed for the benefit of the ASCMP are to be

deposited in the general fund, provided that money or proceeds donated or bequeathed for specific purposes shall be held in trust, and may only be used for purposes described in the donation or bequest.

History: 1990, PL 21-35.

Chapter 06

QUARANTINE OF PETS AND AGRICULTURAL PRODUCTS AND ANIMALS

Sections:

24.0601 Quarantine rules.

24.0602 Inspections.

24.0603 Destruction of plants, pets and agricultural products and animals.

24.0604 Violation-Penalty.

24.0601 Quarantine rules.

The Director of Agriculture is authorized to promulgate necessary rules concerning the quarantine of agricultural products, livestock, poultry, or domestic pets entering American Samoa, for the purpose of preventing entry of injurious insects or diseases. Any rules promulgated pursuant to this section must conform to the Administrative Procedure Act, 4.1001 et seq.

History: 1962, PL 7-18; 1968, PL 10-44; 1972, PL 12-37 § 1.

24.0602 Inspections.

The Director of Agriculture or his representative is authorized to conduct inspections and examinations, as necessary, of all persons, vessels and aircraft entering American Samoa from any port outside American Samoa.

History: 1972, PL 12-37 § 2.

24.0603 Destruction of plants, pets and agricultural products and animals.

Notwithstanding 24.0604, any agricultural products, livestock or poultry, or plants or domestic pets brought into American Samoa in violation of the rules of the Director of Agriculture may be confiscated and destroyed by the Director of Agriculture or his authorized representative.

History: 1972, PL 12-37 § 3.

24.0604 Violation-Penalty.

A person, firm or corporation violating a rule adopted by the Director of Agriculture pursuant to 2.0201 is guilty of a class A misdemeanor.

History: 1972, PL 12-37 § 3; amd 1980, PL 16-90 § 9.

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

Chapter 07

ENDANGERED SPECIES

Sections:

24.0701 Definitions.

24.0702 Commission-Establishment and duties.

24.0701 Definitions.

As used in this chapter, unless the context otherwise requires, the following meanings apply:

- (1) "Commission" means the American Samoa Natural Resources Commission.
- (2) "Endangered species" means any species of fish, plant life, or wildlife which is in danger of extinction throughout all or a significant part of its range other than a species of insects determined by the Commission or the Secretary of the United States Department of the Interior to constitute a pest whose protection under this chapter would present an overwhelming and overriding risk to man.
- (3) "Fish or wildlife" means any member of the animal kingdom, including any mammal, fish, amphibian, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring, or the dead body or parts thereof. Fish or wildlife includes migratory birds, nonmigratory birds, or endangered birds for which protection is afforded by treaty or other international agreement.
- (4) "Import" means to bring into, or introduce into, or attempt to bring into, or introduce into, any place subject to the jurisdiction of this Territory.
- (5) "Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, agent, department, or instrumentality of the federal government, of any state or territory or political subdivision thereof, or of any foreign government.
- (6) "Plant or plant life" means any member of the plant kingdom, including seeds, roots, and other parts thereof.
- (7) "Species" includes any subspecies of fish, plant life, or wildlife and any other group of fish, plants, or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed or cross-pollinate when mature.
- (8) "Take" means, in reference to fish and wildlife, to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct.
- (9) "Take" means, in reference to plants, to collect, pick, cut, dig up, or destroy in any manner.
- (10) "Threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

History: 1982, PL 17-49 § 1.

24.0702 Commission-Establishment and duties.

- (a) The American Samoa Natural Resources Commission is established. The Commission is comprised of 5 members appointed by the Governor and confirmed by the Legislature, who elect a chairman from their membership.
- (b) The Commission shall meet periodically, but not less frequently than once every 2 months. The Commission, in cooperation with existing governmental agencies, shall develop and submit to the Legislature on or before 1 January 1991, the following information:
 - (1) a list of endangered species within the Territory;
 - (2) a list of threatened species within the Territory;
 - (3) a list of species whose taking should be regulated and suggested seasons or limits;
 - (4) suggested programs for the conservation, protection, restoration, and propagation of endangered and threatened species within the Territory;
 - (5) suggested sources of funding, private and public, for implementing this chapter.

History: 1982, PL 1749 § 2; and 1984, PL 18-50 § 1, amd 1985, PL 19-29§ 1; amd 1990 PL 21-39.

Amendments: 1984 Subsection (a): deletes “for a period not to exceed one year from 24 November 1982”. Subsection (b): changed “1983” to be “1985” in order to establish a permanent Commission.
1985 Subsection (b): changed “1985” to “1986”.

Chapter 08

NOXIOUS WEEDS

Sections:

- 24.0801 Identification of noxious weeds.**
- 24.0802 Search and destruction of weeds-Notice to district governor.**
- 24.0803 Destruction of noxious weeds.**
- 24.0804 Violation-Penalty.**

24.0801 Identification of noxious weeds.

The Governor, with the advice of the Director of Agriculture, may declare by regulation any weed or plant growth which endangers or is likely to endanger the agricultural economy of American Samoa to be a noxious weed.

History: 1962, PL 7-18.

24.0802 Search and destruction of weeds- Notice to district governor.

(a) The District Governor of each district shall, at regular intervals, cause the local government officials of his district to make careful searches for noxious weeds which may be present in their respective jurisdictions.

(b) Any noxious weeds discovered by local government officials shall be reported to the District Governor, and the District Governor shall immediately inform the Director of Agriculture, or any person acting under his direction.

(c) The local government officials shall have the power and authority to enter upon any land to search for and destroy noxious weeds. The searcher shall, before entering upon any land, inform the owner or the user of the land of the reason for the search.

History: 1962, PL 7-18.

24.0803 Destruction of noxious weeds.

The owners and users of all land in American Samoa shall, immediately upon discovery of such, take steps to destroy noxious weeds present on their land, and the Director of Agriculture may order the user or owner of the land to destroy the weeds and shall instruct the owner or user of the proper method to most effectively destroy noxious weeds and prevent seeding.

History: 1962, PL 7-18.

24.0804 Violation-Penalty.

Any person who purposely allows noxious weeds to grow on land owned or used by him, or who refuses to obey any lawful order or instruction of the Director of Agriculture pertaining to noxious weeds, or who interferes with the Director of Agriculture or any person acting under his direction in the performance of his duty, shall be sentenced as for a class C misdemeanor.

History: 1962, PL 7-18; amd 1980, PL 16-90 § 10.

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

Chapter 09

AMERICAN SAMOA SOIL AND WATER CONSERVATION DISTRICT

Sections:

- 24.0901 Short title.**
- 24.0902 Policy.**
- 24.0903 Definitions.**
- 24.0904 Soil and water conservation district-Establishment-Tenure-Meeting-Management.**
- 24.0905 Powers of the district board.**
- 24.0906 Limitations of powers of the district and board.**

24.0901 Short title.

This chapter shall be known as the “American Samoa Soil and Water Conservation District Act”.

History: 1991 PL 22-20; amd 1993, PL 23-8.

24.0902 Policy.

(a) It is the public policy of this Territory and the purpose of this chapter to promote soil and water conservation by creating a soil and water conservation district to advise on methods of preventing erosion, and protecting and improving water quality. The conservation district shall work in cooperation with other American Samoan government agencies to conserve, develop and use the soil and water resources of the Territory in order to control and prevent soil erosion, prevent flooding, and to protect and improve water quality of both surface and underground waters.

History: 1991 PL 22-20; amd 1993 PL 23-8.

24.0903 Definitions.

As used in this chapter, unless the context clearly requires otherwise:

- (a) “Administrative district” means the Eastern, Western and Manu’a districts (Swains Island as a part of Manu’a district).
- (b) “Conservation district” means a governmental subdivision of this Territory, and a public body corporate and politic, organized in accordance with this chapter.
- (c) “Due notice” means notice given during a ten day period by publication in local newspapers.
- (d) “Land occupier” or “occupier of land” includes both the person, firm, or corporation who is an owner or operator of any lands lying within a district organized under this act.

History: 1991 PL 22-20; amd 1993 PL 23-8.

24.0904 Soil and water conservation district-Establishment-Tenure-Meeting-Management.

- (a) There is a soil and water conservation district referred to in this chapter as the

conservation district.

(b) A Conservation District Board is established. The Board shall consist of sixteen members. Eight members shall be appointed from each of the following departments of the American Samoa Government by the Governor of American Samoa. These departments are:

- (1) American Samoa Community College Land Grant Program;
- (2) American Samoa Environmental Protection Agency;
- (3) Department of Agriculture;
- (4) Department of Public Works;
- (5) Department of Marine and Wildlife Resources;
- (6) Office of Economic Development Planning, Coastal Management Program;
- (7) Office of Samoan Affairs; and
- (8) American Samoa Power Authority, Water Division.

Two members are to be appointed by the Governor from the environmentally concerned organizations. Three farmers are to be appointed by the Governor to be members of the District Board. Three additional members are the three administrative District Governors or their designated representatives.

(c) The term of office of Conservation District Board members shall be three years. Vacancies will be filled in the same manner as the selection of Board member shall designate a chairperson and may, from time to time, change the designation.

(d) Monthly meeting shall be held and eight of the Board members shall constitute a quorum and the concurrence of a majority present on any official matter shall be necessary.

(e) Board members shall receive no compensation for their services, but shall be entitled to necessary expenses. They may employ such officers and employees as they may require, and fix their compensation, and shall provide for surety bonds for employees or officers who are entrusted with funds. They shall keep a record of proceedings, resolutions, regulations, and orders issued or adopted, and accounts of receipts and disbursements, and shall furnish to the Governor and Legislature copies of documents, instruments or information concerning their activities.

History: 1991 PL 22-20; amd 1993 PL 23-8.

24.0905 Powers of the district and Board.

A district organized under this chapter, and the Board members thereof, shall have in addition to other powers granted in other sections of this chapter the following powers:

(1) To provide for and encourage surveys, investigation, and research relating to soil and water conservation and water quality, and to publish and disseminate information concerning such subjects.

(2) To provide for and encourage demonstrations relative to the control and prevention of erosion, the conservation of soil and water resources, and improvement of water quality on publicly owned lands within the Territory with consent of the agency having jurisdiction thereof, and on other lands with the consent of the occupier of lands.

(3) To cooperate, or enter into agreements with and to furnish financial or other aid, including machinery, equipment, fertilizer, seeds, and other material, to any agency or any occupier of lands within the Territory, for carrying on soil and water conservation and water quality activities, subject to such conditions as the board may deem necessary.

(4) To acquire property, real or personal, or rights or interests therein; to maintain, administer, and improve the property, receive income from it, and expend the income in carrying out the purposes of this chapter; and to sell, lease, or otherwise dispose of any such property.

(5) To construct, improve, and maintain any structures necessary for carrying out the purpose of this chapter.

(6) To develop plans for the conservation of soil and water resources, the control and prevention of erosion and improvement of water quality within the district and to publish or otherwise bring them to the attention of district land occupiers.

(7) To apply for and accept grants, loans, contributions, appropriation, and assistance from any source, private or public (federal, territorial, or local); to enter into and carry out contracts of agreements in connection therewith, and to use or expend these resources in carrying on its operations.

(8) To sue and be sued; to have a seal, which seal will be judicially noticed; to make and execute any necessary contracts or other instruments.

(9) As a condition to the extending of benefits, or the performance of work upon lands under this chapter, the Board may request land occupiers to contribute money, services or materials, to any operation conferring such benefits.

History: 1991 PL 22-20; and 1993, PL 23-8.

24.0906 Limitations of powers of the District and Board.

The District and Board will not interfere with the Samoan traditional land ownership system.

History: 1991 PL 22-20; 1993, PL 23-8.

Chapter 10

COCONUT BEETLES

Sections:

- 24.1001 Duty of landowner or occupier.**
- 24.1002 Weekly government inspections and reports.**
- 24.1003 Search for coconut beetles by village males-Exempt persons.**
- 24.1004 Power of Governor to issue rules.**
- 24.1005 Power of village council to adopt rules.**
- 24.1006 False reports-Penalty.**
- 24.1007 Violation-Penalty.**

24.1001 Duty of landowner or occupier.

Every person who owns land or is in possession of land shall keep the land free and clear of all rotten wood, decayed logs and stumps, coconut husks heaps of rotten grass or leaves and decayed rubbish of any kind.

History: 1962, PL 7-18.

24.1002 Weekly government inspections and reports.

(a) Each pulenuu shall once each week make a thorough inspection of all lands and plantations within the village, and shall report in writing to the County Chief before the third day of each month the name of any person whose land or plantation is uncleared, or in an unsanitary condition.

(b) The County Chief shall personally inspect such land and forward the pulenuu's report, together with his own comments, to the District Governor, who shall in turn forward it to the

director of agriculture before the tenth day of each month.

History: 1962, PL 7-18.

24.1003 Search for coconut beetles by village males-Exempt persons.

(a) Upon a day designated by the Governor, the pulenuu shall assemble all able-bodied males of the village, and they shall make a careful search of the village and all plantations for coconut beetles and their breeding places.

(b) All beetles, larvae and eggs that are found shall be forwarded on the same day to the District Governor, with a full written report. The District Governor shall destroy the beetles, and send a copy of the report to the Director of Agriculture.

(c) Employees of the United States or the government, District Governors, County Chiefs, associate judges, children actually in attendance at school, and any persons regularly employed for a bona fide wage or salary shall be exempt from the duty to search.

History: 1962, PL 7-18.

24.1004 Power of Governor to issue rules.

The Governor may issue such rules, and appoint such inspectors, as he deems necessary to carry out the purposes of this chapter.

History: 1962, PL 7-18.

24.1005 Power of village council to adopt rules.

Village councils may adopt rules for the purposes of this chapter that are not inconsistent with any other provisions of this Code.

History: 1962, PL 7-18.

24.1006 False reports-Penalty.

Any Samoan official who knowingly makes any false report or purposely fails to report shall be sentenced as for a class B misdemeanor, and, in addition, removed from office by the Governor.

History: 1962, PL 7-18; amd 1980, PL 16-90 § 11.

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

24.1007 Violation-Penalty.

Any person who violates any provision of this chapter shall be sentenced as for a class C misdemeanor.

History: 1962, PL 7-18; amd 1980, PL 16-90 § 12.

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

Chapter 11

(RESERVED)

Chapter 12

PESTICIDES

Sections:

I. General Provisions

- 24.1201 Short title.**
- 24.1202 Definitions.**
- 24.1203 Enforcing official.**
- 24.1204 Director-Authority.**
- 24.1205 Director-Rule-making authority.**
- 24.1206 Director-Rules-Labeling, registration, experimental, application.**
- 24.1207 Director-Determination of restricted pesticide uses.**
- 24.1208 Rules to be consistent with federal regulations.**
- 24.1209 Authority to make reports.**
- 24.1210 Standards of competency.**
- 24.1211 Certification requirements.**
- 24.1212 Commercial applicator's certificate-Required.**
- 24.1213 Commercial applicator's certificate-Application.**
- 24.1214 Commercial applicator's certificate-Written examination.**
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- 24.1221 Unlawful distributions.**
- 24.1222 Unlawful acts.**
- 24.1223 Exemptions to penalties.**
- 24.1224 Enforcement-Search warrant.**
- 24.1225 Stop sale, use, or removal order.**
- 24.1230 Information required on records.**
- 24.1231 Cooperation with other agencies.**
- 24.1232 Delegation of duties.**
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II. Insecticides

- 24.1250 Definitions.**
- 24.1251 Ban on DDT.**
- 24.1252 Power of director of agriculture.**
- 24.1253 Age restriction on sales.**
- 24.1254 Suspension or revocation of business license.**
- 24.1255 Violation-Penalty.**
- 24.1256 Government sale of chemicals.**

I. General Provisions

- 24.1201 Short title.**

The act codified in this chapter shall be known and may be cited as the "American Samoa Pesticide Act of 1979".

History: 1979, PL 16-51, § 1.

- 24.1202 Definitions.**

As used in this chapter:

(1) "Animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish and shellfish.

(2) Applicators.

(A) "Certified applicator" means any individual who is certified under 24.1212 through 24.1216 to use or supervise the use of any restricted use pesticide.

(B) "Private applicator" means an individual who uses or supervises the use of any restricted use pesticide for purposes of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

(C) "Commercial applicator" means an individual (whether or not he is a private applicator with respect to some uses) who uses or supervises the use of any restricted use pesticide for any purpose or on any property other than as provided in subparagraph (2) (B).

(3) "Beneficial insects" means those insects which, during their life cycle, are effective pollinators of plants, are parasites or predators of pests, or are otherwise beneficial.

(4) "Device" means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

(5) "Director" means the Director of the Department of Agriculture.

(6) "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, pesticides in this territory.

(7) "Environment" includes water, air, land, plants and man and other animals living therein, and the interrelationships which exist among these.

(8) "EPA" means the United States Environmental Protection Agency.

(9) "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7. USC § 136 et seq.).

(10) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insect a comprising 6-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than 6 legs, (e.g., spiders, mites, ticks, centipedes, and wood lice).

(11) "Label" means the written, printed or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

(12) "Labeling" means the label and all other written, printed, or graphic matter: (A) accompanying the pesticide or device at anytime; or (B) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of EPA; the United States Departments of Agriculture and Interior and Department of Health, Education, and Welfare; Territorial experiment stations; Territorial agricultural colleges; and other similar Federal or Territorial institutions or agencies authorized by law to conduct research in the field of pesticides.

(13) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(14) "Person" means any individual, partnership, association, fiduciary, corporation, or any organized group of persons whether incorporated or not.

(15) "Pest" means (A) any insect, rodent, nematode, fungus, weed; or (B) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except virus,

bacteria, or other micro-organism on or in living man or other living animals), which the director declares to be a pest under 24.1204.

(16) “Pesticide” means: (A) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and (B) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

(17) “Pesticide dealer” means any person who distributes any restricted use pesticide or any pesticide whose use or distribution is restricted by the director.

(18) “Protect health and the environment” means protection against any unreasonable adverse effects on the environment.

(19) “Restricted use pesticide” means any pesticide or pesticide use classified by the administrator, EPA, for use only by or under the direct supervision of a certified applicator.

(20) “Territory restricted pesticide use” means any pesticide use which, when used as directed or in accordance with a widespread and commonly recognized practice, the Director determines requires additional restrictions for that use to prevent unreasonable adverse effects on the environment including man, lands, beneficial insects, animals, crops, and wildlife, other than pests.

(21) “Under the direct supervision of a certified applicator” means that unless otherwise prescribed by its labeling, a pesticide is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

(22) “Unreasonable adverse effects on the environment” means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

(23) “Weed” means any plant which grows where not wanted.

(24) “Wildlife” means all living things that are neither human, domesticated, nor, as defined in this act, pests, including but not limited to mammals, birds, and aquatic life.

History: 1979, PL 16-51 § 1.

24.1203 Enforcing official.

This act shall be administered by the Director, Department of Agriculture, hereinafter referred to as “Director”.

History: 1979, PL 16-51 § 1.

24.1204 Director-Authority.

The Director is authorized, after due notice and an opportunity for a hearing, to:

(1) declare as a pest any form of plant or animal life (other than man and other than bacteria, viruses, and other microorganisms on or in living man or other living animals) which is injurious to health or the environment;

(2) determine which pesticides, and quantities of substances contained in pesticides, may cause unreasonable adverse effects on the environment. The Director shall be guided by EPA regulations in this determination.

History: 1979, PL 16-51 § 1.

24.1205 Director-Rule-making authority.

The Director is authorized, after due notice to adopt appropriate rules as necessary for the enforcement and administration of this chapter, including but not limited to rules providing for:

- (1) the collection, examination, and reporting of samples of pesticides or devices under this act;
- (2) the safe handling, transportation, storage, display, distribution, and disposal of pesticide and their containers;
- (3) labeling requirements of all pesticides distributed in American Samoa under this chapter, provided that such rules may not impose any requirements for federally registered pesticides in addition to or different from those required pursuant to FIFRA, unless previously approved by EPA;
- (4) determining which pesticides with restricted uses may be distributed only by authorized pesticide dealers;
- (5) prescribing methods to be used in the application of pesticides where the Director finds that the rules are necessary to carry out the purpose and intent of this chapter;
- (6) the registration of pesticides used or distributed in American Samoa, consistent with § 24 of FIFRA;
- (7) the issuance of experimental use permits for use of pesticides where necessary to gather information to support a registration, consistent with § 5 of FIFRA;
- (8) establishment of procedures and standards of competency for the certification of pesticide applicators and of categories for certification of commercial applicators; and
- (9) any other matters necessary to achieve the purposes of this act.

History: 1979, PL 16-5 1 § 1.

24.1206 Director-Rules-Labeling, registration, experimental, application.

(a) For the purpose of uniformity and in order to enter into cooperative agreements, the Director may adopt rules in conformity with the primary pesticide standards, particularly as to labeling, registration requirements, and issuance of experimental use permits as established by EPA or other federal or state agencies.

(b) Rules adopted pursuant to paragraph (5) of 24.1205 may relate to the time, place, manner, methods, materials, and amounts and concentrations in connection with the application of the pesticide and may restrict or prohibit use of pesticides in designated areas during specified periods of time. These rules shall encompass all reasonable factors which the Director considers necessary to prevent damage or injury by drift or misapplication to plants, or wildlife on adjoining lands; fish and other aquatic life in waters in reasonable proximity to the area to be treated; and humans, animals, or beneficial in-sects. In adopting the rules the Director shall give consideration to pertinent research findings and recommendations of other agencies of the Territory, the Federal Government, or other reliable sources. The Director may, by rule, require that notice of a proposed application of a pesticide be given to landowners whose property is adjacent to the property to be treated or in the immediate vicinity of it, if he finds that the notice is necessary to carry out the purposes of this chapter.

History: 1979, PL I6-51 § 1.

24.1207 Director-Determination of restricted pesticide uses.

In addition to those restricted use pesticides classified by the administrator, EPA, the Director may also, by rule, determine restricted pesticide uses for the territory or for designated areas within the Territory. If the Director determines that the pesticide (when applied in accordance with its directions for use, warnings, and cautions, and for uses for which it is registered) may cause, without additional regulatory restrictions, unreasonably adverse effects on the environment, including injury to the applicator or other persons because of acute dermal or inhalation toxicity of the pesticide, the pesticide shall be applied only by or under the direct supervision of a

certified applicator, or subject to such other restrictions as the Director may specify. The other restrictions may include, but are not limited to, the conditions of use as provided in subsection (b) of 24.1206.

History: 1979, PL 16-51 § 1.

24.1208 Rules to be consistent with federal regulations.

(a) Rules adopted under this act shall not permit any pesticide use which is prohibited by FIFRA and regulations or orders issued under it. Rules relating to certified applicators, special local needs registrations and experimental use permits shall not be inconsistent with the requirements of FIFRA and regulations promulgated under it.

(b) Rules under this act shall not permit any pesticide use which is found to exceed the tolerances as found at 40 CFR 180 for that particular pesticide. Violations of tolerances found at 40 CFR 180, are to be enforced by the appropriate authority regulating the safety, maintenance, preparation, and sanitization of food for human consumption.

History: 1979, PL 16-51 § 1; amd 2015, PL 34-5 § 1.

24.1209 Authority to make reports.

In order to comply with §4 of FIFRA, the Director is authorized to make reports to the EPA in a form and containing the information that agency may from time to time require.

24.1210 Standards of competency.

(a) Standards of competency for the certification of pesticide applicators may relate to the use and handling of pesticides, or to the use and handling of the pesticide or class of pesticides covered by the individual's certification, and shall be relative to the hazards involved. In determining standards, the Director shall consider the characteristics of the pesticide formulation such as: the acute dermal and inhalation toxicity; the persistence, mobility, and susceptibility to biological concentration; the use experience which may reflect an inherent misuse or an unexpected good safety information; the relative hazards of patterns of use such as granular soil applications, ultra low volume or dust aerial applications, or air blast sprayer applications; and the extent of the intended use.

(b) Standards of competency established by the Director under subsection (a) shall include at a minimum the standards established by EPA in federal regulations at 40 CFR 171 A-171.6, provided that the Director may omit the standards established for those federal commercial applicator categories which are not adopted by the Director.

History: 1979, PL 16-51 § 1.

24.1211 Certification requirements.

No individual may use or supervise the use of any restricted use pesticide unless the individual is a certified applicator; provided, that a competent individual who is not a certified applicator may use a restricted use pesticide under the direct supervision of a certified applicator.

History: 1979, PL 16-51 § 1.

24.1212 Commercial applicator's certificate-Required.

No commercial applicator may use or supervise the use of any restricted use pesticide without a commercial applicator's certificate issued by the Director.

History: 1979, PL 16-51 § 1.

24.1213 Commercial applicator's certificate-Application.

Application for the commercial applicator's certificate shall be made in writing to the Director on a designated form obtained from the Director's office. Each application for a certificate shall contain information regarding the applicant's qualifications and proposed operations, certificate category or categories the applicant is applying for, and shall include the following:

- (1) the full name of the individual applying for the certificate;
- (2) the address of the applicant in American Samoa; and
- (3) any other information prescribed by the Director.

History: 1979, PL 16-51 § 1.

24.1214 Commercial applicator's certificate-Written examination.

The applicant shall pass a written examination to demonstrate to the Director his knowledge of the nature and effect of pesticides. The examination will cover at a minimum the general standards of competency in 40 CFR 171.4(b) and 171.6 as well as the specific standards in 40 CFR 171.4(c) for the category or categories in which the applicant desires to be certified.

History: 1979, PL 16-51 § 1.

24.1215 Commercial applicator's certificate-Issuance.

The Director may issue a commercial applicator certificate to any applicant who fulfills the requirements specified in 24.1212 through 24.1215. Commercial applicator certificates shall be valid for a period of 2 years from the date of issuance unless sooner suspended or revoked by the Director under 24.1220 through 24.1223. The Director may renew any applicant's certificate under the category or categories for which such applicant is certified, subject to reexamination or other requirements imposed by the Director to ensure that the applicator continues to meet the requirements of changing technology and to assure a continuing level of competency and ability to use pesticides safely and properly.

History: 1979, PL 16-51 § 1.

24.1216 Private applicators.

(a) No private applicator may use or supervise the use of any restricted use pesticide without first complying with the certification requirements established by the Director by rule.

(b) Certification for private applicators will at a minimum include those standards specified in 40 CFR 171.5 and 171.6.

(c) A private applicator certification issued by the Director is valid for a period of 3 years from the date of issuance unless sooner suspended or revoked by the director under 24.1220 through 24.1223. The Director may renew private applicator certification, subject to the applicator's compliance with procedures established by the Director to ensure that certified private applicators continue to meet the requirements of changing technology and to assure a continuing level of competency to use pesticides safely and properly.

History: 1979, PL 16-51 § 1.

24.1220 Certification-Suspension or revocation.

The Director may suspend, pending inquiry, for not longer than 10 days and after opportunity for a hearing may deny, suspend, revoke, or modify any provision of any certification issued under this act if he finds that the applicant or the holder of a license, permit, or certification has been convicted or is subject to a final order imposing a civil penalty under §14, FIFRA, or has

committed any of the following acts, each of which is declared to be a violation of this chapter. Any certified or uncertified person shall also be subject to the penalties provided for by 24.1233 for commission of any of the following acts:

- (1) made false or fraudulent claims through any media representing the effect of pesticides or methods to be utilized;
- (2) used a pesticide inconsistent with the labeling, the EPA or territory registration for that pesticide, or in violation of the EPA or territory restrictions on the use of that pesticide;
- (3) applied known ineffective or improper pesticides;
- (4) operated faulty or unsafe equipment;
- (5) operated in a faulty, careless, or negligent manner;
- (6) neglected or otherwise failed to comply with the provisions of this act, the rules adopted under it, or of any lawful order of the Director's;
- (7) refused or neglected to keep and maintain the records required by this chapter or to make reports when and as required;
- (8) made false or fraudulent records, invoices, or reports;
- (9) used, or supervised the use of, a restricted use pesticide without having qualified as a certified applicator according to 24.1212 through 24.1216;
- (10) used fraud or misrepresentation in making an application for, or renewal of, a license, permit, or certification;
- (11) failed to comply with any limitations or restrictions on or in a duly issued license, permit, or certification;
- (12) aided or abetted a licensed or an unlicensed person to evade the provisions of this act, conspired with such a licensed or an unlicensed person to evade the provisions of this act, or allowed his license, permit, or certification to be used by another person;
- (13) made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land; or
- (14) impersonated any federal, or territory inspector or official.

History: 1979, PL 16-51 § 1.

24.1221 Unlawful distributions.

It is unlawful for any person to distribute in this territory any of the following:

- (1) any pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration period if the change will not violate any provision of FIFRA or this act;
- (2) any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to the container, and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read, a label bearing the information required by FIFRA and regulations issued under it or by the rules adopted under this chapter;
- (3) any pesticide which has not been colored or discolored under § 25(c)(5) of FIFRA or rules adopted under this chapter;
- (4) any pesticide in a container which, due to damage, is hazardous.

History: 1979, PL 16-51 § 1.

24.1222 Unlawful acts.

It is unlawful for any person to:

- (1) distribute any restricted use pesticide to any person who is not certified or under the direct

supervision of an individual who is certified to use or purchase such pesticide; provided, that the Director may permit distribution to an uncertified individual for use by a certified applicator as authorized by FIFRA or EPA;

(2) detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for in regulations adopted under this chapter, or to add any substance from, a pesticide in a manner that may defeat the purpose of this act or the rules adopted under it;

(3) handle, transport, store, display, or distribute pesticides in a manner so as to endanger man and his environment or to endanger food, feed, or any other products that may be transported, stored, displayed, or distributed with those pesticides;

(4) dispose of, discard, or store any pesticides or pesticide containers in a manner so as to cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects, or to pollute any water supply or waterway; and

(5) refuse or otherwise fail to comply with the provisions of this chapter, the rules adopted under it, or of any lawful order of the director.

History: 1979, PL 16-51 § 1.

24.1223 Exemptions to penalties.

(a) The penalties provided for violations of paragraphs (1) through (4) of 24.1221 do not apply to:

(1) any carrier while lawfully engaged in transporting a pesticide within American Samoa, if the carrier, upon request, permits the director to copy all records showing the transactions in and movement of the pesticides or devices;

(2) public officials of this Territory and the Federal Government while engaged in the performance of their official duties in administering Territory or Federal pesticide laws or regulations;

(3) the manufacturer, shipper, or distributor of a pesticide for experimental use only by or under the supervision of an agency of this territory or the federal government authorized by law to conduct research in the field of pesticides, provided that there is a valid experimental use permit as provided for by rules adopted under this act or by EPA for that pesticide; or

(4) any person who ships a substance or mixture of substances being put through tests, in which the purpose is only to determine its value for pesticide purposes, or to determine its toxicity or other properties, and from which the user does not expect to receive any benefit in pest control from its use.

(b) No pesticide or device may be deemed in violation of this chapter when intended solely for export to a foreign country, and when prepared or packed according to the specification or directions of the purchaser. If not so exported, all provisions of this chapter apply.

History: 1979, PL 16-51 § 1.

24.1224 Enforcement-Search Warrant.

(a) For the purpose of carrying out the provisions of this chapter, the Director may enter upon any public or private premises at reasonable times, in order to:

(1) have access for the purpose of inspecting any equipment used in applying pesticides;

(2) inspect or sample lands actually or reported to be exposed to pesticides;

(3) inspect storage or disposal areas;

(4) inspect or investigate complaints of injury to humans or land;

(5) sample pesticides being applied or to be applied;

(6) observe the use and application of a pesticide; and

(7) have access to pesticides or devices packaged and labeled for distribution and to sample the pesticides or devices and any containers or labeling for the pesticides or devices.

(b) Should the Director be denied access to any land where the access was sought for the purposes set forth in this chapter, he may apply to any court of competent jurisdiction for a search warrant authorizing access to the land for those purposes. The court may, upon the application, issue the search warrant for the purposes requested.

(c) The Director, with the aid and advice of the Attorney General, is charged with the duty of enforcing the requirements of this act and any rules adopted under it.

(d) The Director may bring an action to enjoin the violation or threatened violation of any provision of the act or any rule adopted under this chapter in a court of competent jurisdiction of the area in which the violation occurs or is about to occur.

(e) Nothing in this chapter shall be construed as requiring the Director to report minor violations of this act for prosecution or for the institution of condemnation proceedings when he believes that the public interest will be served best by a suitable notice of warning in writing.

History: 1979, PL 16-51 § 1; amd 1980, PL 16-69 § 1.

Amendments: 1980 Subsection (c): deleted “or without” prior to “the aid”.

24.1225 Stop sale, use, or removal order.

When the Director has reasonable cause to believe a pesticide or device is being distributed, stored, transported, or used in violation of any of the provisions of this chapter, or of any of the rules adopted, he may issue and serve a written “stop sale, use, or removal” order upon the owner or custodian of the pesticide or device. If the owner or custodian is not available for service of the order upon him, the Director may attach the order to the pesticide or device, and it shall not be sold, used, or removed until the provisions of this act or rules adopted have been complied with, and the pesticide or device has been released in writing under conditions specified by the Director, or the violation has been otherwise disposed of as provided in this act by a court of competent jurisdiction.

History: 1979, PL 16-51 § 1.

24.1230 Information required on records.

(a) Any distributor of pesticides may be required by the Director to keep accurate records containing the following:

- (1) the delivery, movement, or holding of any pesticide or device including the quantity;
- (2) the date of shipment and receipt;
- (3) the name of consignor and consignee; and
- (4) any other information, necessary for the enforcement of this act, as prescribed by the director.

(b) The Director shall have access to the records required in subsection (a) at any reasonable time to copy or make copies of those records solely for the purpose of carrying out the provisions of this act. Unless required for the enforcement of this act, the information shall be confidential and if summarized, shall not identify an individual person.

(c) Certified commercial applicators shall maintain records with respect to each application of restricted use pesticides. Commercial applicator records shall include:

- (1) brand and common name of pesticide product applied;
- (2) EPA registration number;
- (3) type of formulation;
- (4) percent active ingredient;

- (5) scientific or common name of target pest, and purpose of application;
- (6) dilution rate;
- (7) total amount of pesticide used;
- (8) total area covered;
- (9) date of application;
- (10) address of location of treated site;
- (11) name of certified applicator and his certification number; and
- (12) any other information that the Director considers necessary.

(d) The records required in subsection (c) shall be kept for a period of 2 years from the date of the application of the pesticide and the Director shall, upon request, be furnished with a copy of those records by the certified commercial applicator.

(e) The Director may by rule require commercial applicators to keep records on the use of any other pesticide.

History: 1979, PL 16-51 § 1.

24.1231 Cooperation with other agencies.

The Director may cooperate, receive grants-in-aid, and enter into cooperative agreements or contracts with any agency of the federal government of this territory or its subdivisions, or with any agency of another state, in order to:

- (1) secure uniformity of rules;
- (2) register pesticides under the authority of this act and FIFRA;
- (3) cooperate in the enforcement of the federal pesticide control laws through the use of territorial or federal personnel and facilities and to implement cooperative enforcement programs including but not limited to the registration and inspection of establishments;
- (4) develop and administer territorial plans for training and for certification of certified applicators consistent with federal standards, and submit those plans to meet federal certification requirements as provided for in 4 of FIFRA; or
- (5) contract for training with other agencies for the purpose of training certified applicators.

History: 1979, PL 16-51 § 1.

24.1232 Delegation of duties.

The functions vested in the Director by this act may be delegated by him to employees of the department or agents as the Director may from time to time designate for those purposes.

History: 1979, PL 16-51 § 1.

24.1233 Violation-Penalties.

(a) Any person violating any provisions of this chapter or rules adopted under it is guilty of a class B misdemeanor for the 1st violation. In any instance where a person was issued a warning in writing by the Director under this chapter, the person shall, upon conviction of that provision of this chapter, be guilty of a class A misdemeanor, provided that any offense committed more than 3 years after a written warning or a previous conviction shall be construed as a list offense and a class B misdemeanor.

(b) No Territorial court shall allow the recovery of damages from administrative action taken or for “stop sale, use, or removal” if the court finds that there was probable cause for that action.

History: 1979, PL 16-51 § 1, amd 1980, PL 16-69 § 2; 1980, PL 16-90 § 14.

Amendments: 1980 Subsection (a): deleted warning provision. Subsection (a): amended to conform with penalties provided for in Title 46, Criminal Justice.

II. Insecticides

24.1250 Definitions.

As used in this chapter:

- (a) "Fungicide" means any solution or product used to inhibit the growth of fungi.
- (b) "Herbicide" means any solution or product used to destroy or inhibit any form of plant growth.
- (c) "Insecticide" means any chemical solution or product the purpose of which is to control insects in agriculture.

History: 1970, PL 11-108; 1972, PL 12-54 § 1

24.1251 Ban on DDT.

The importation, sale, or use of the chemical dichloro-diphenyl-trichloroethane, commonly known as DDT, is absolutely prohibited in American Samoa.

History: 1970, PL 11-108.

24.1252 Power of Director of Agriculture.

The Director of Agriculture may:

- (1) ban the importation of such fungicides, herbicides, and insecticides, in addition to DDT, as he finds to constitute a danger to the people, animals or crops in American Samoa;
- (2) set forth requirements for the labeling of fungicide, herbicide, and insecticide containers, so that the users of these products may be informed of their proper use, of any danger in case of misuse, and of methods for immediate treatment of persons harmed through misuse;
- (3) require that fungicide, herbicide, or insecticide vendors personally inform purchasers of these products of their proper use and dangerous potential prior to sale.

History: 1970, PL 11-108; 1972, PL 12-54 § 2.

24.1253 Age restriction on sales.

The sale of any fungicide, herbicide, or insecticide to persons under the age of 18 years is prohibited.

History: 1970, PL 11-108; 1972, PL 12-54 § 3.

24.1254 Suspension or revocation of business license.

Conviction of a vendor under 24.1255 shall constitute good cause for the suspension or revocation of his business license.

History: 1970, PL 11-108.

24.1255 Violation-Penalty.

Any person who violates any provision of 24.1250 through 24.1254, and any vendor who fails to comply with such requirements as may be set forth by the Director of Agriculture, shall be sentenced as for a class B misdemeanor.

History: 1970, PL 11-108, and 1980, PL 16-90 § 13.

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

24.1256 Government sale of chemicals.

The Director of Agriculture is responsible for the purchasing, stocking, and selling of fungicide, herbicide, and insecticide distributed by the government.

History: 1984, PL 18-26 § 1.

Chapters 13-19

(RESERVED)

Chapter 20

AGRICULTURAL LOANS

Sections:

- 24.2001 Authority to make loan.**
- 24.2002 Authorized loans.**
- 24.2003 Dollar limit on loans.**
- 24.2004 Interest rate.**
- 24.2005 Loan agreement.**
- 24.2006 Deposits and funds.**
- 24.2007 Advisory board.**
- 24.2008 Enforcement of loan agreement.**
- 24.2009 Loans by Development Bank of American Samoa.**

24.2001 Authority to make loan.

(a) Within the limits of funds budgeted and appropriated for the purpose, and subject to such regulations as the Governor may prescribe, the Director of the Department of Agriculture is authorized to make agriculture crop loans in accordance with this chapter.

(b) A loan shall be made only if the Director

History: 1962, PL 7-24; 1965, PL 9-16.

24.2002 Authorized loans.

A loan may be made to finance the cost of tools, machinery, materials, and labor for the planting of crops, including the clearing of land for crop production purposes, and for the construction of toolsheds, copra and cocoa driers and other buildings or structures needed for agricultural production.

History: 1962, PL 7-24; 1965, PL 9-16.

24.2003 Dollar limit on loans.

(a) No loan to any one person, together with the unpaid balance of any prior loan under this program, may exceed \$5,000.

(b) The limitation in subsection (a) does not apply to loans granted by the Development Bank of American Samoa under 24.2009.

History: 1962, PL 7-24; 1965, PL 9-16; amd 1977, PL 15-26.

Amendments: 1977 Designed existing section as subsection (a) and added subsection (b).

24.2004 Interest rate.

Each loan shall bear interest at the rate of 4% per year unless a different rate is prescribed by the Governor.

History: 1962, PL 7-24, 1965, PL 9-16.

24.2005 Loan agreement.

(a) Each loan shall be made upon the basis of a written loan agreement signed by the borrower and the matai controlling the family land if family land is involved.

(b) The loan agreement shall specify the obligations assumed by the borrower, which may include farming practices to be followed, marketing controls, and limitations on the portion of the crop produced with the loan that may be used by the borrower or the matai. The loan agreement shall also specify the rights of the director, which shall include the right to inspect and give production, harvesting, and marketing directions, and the right to take possession of the land in the event of a default in payment of the loan and to use the land through agents or lessees for the time necessary to grow and market crops with a net value equal to the unpaid balance due on the defaulted loan.

History: 1962, PL 7-24, 1965, PL 9-16

24.2006 Deposits and funds.

All collections of loans and interest shall be deposited in the general fund of the government, shall be transferred to the account currently available for making agricultural crop loans, and shall be available for making new loans in accordance with the provisions of this chapter.

History: 1962, PL 7-24; 1965, PL 9-16.

24.2007 Advisory board.

In order to assist the Director of the Department of Agriculture or the Development Bank of American Samoa, as the case may be, in determining the eligibility of applicants, each application shall be submitted to an Advisory Board consisting of the County Chief, the District Governor, and the pulenuu of the village where the land is located. The Advisory Board shall give recommendations and such other information as may be requested.

History: 1962, PL 7-24.

24.2008 Enforcement of loan agreement.

It shall be the duty of the County Chief and the District Governor to enforce the provisions of each loan agreement which is approved in accordance with the provisions of this chapter.

History: 1962, PL 7-24.

24.2009 Loans by Development Bank of American Samoa.

(a) The Development Bank of American Samoa may make agricultural crop loans in accordance with the policies prescribed in this chapter, except that collections of loans and interest shall be handled in accordance with the rules applicable to the Bank's funds.

(b) The Director of the Department of Agriculture is authorized to cooperate with the Bank, without reimbursement, in serving any crop loans made by the Bank.

History: 1962, PL 7-24.

Chapter 21

FARM SUBSIDIES

Sections:

- 24.2101 Definitions.**
- 24.2102 Farm subsidy program-Administration.**
- 24.2103 Special eligibility requirements.**
- 24.2104 Tax exemption.**
- 24.2105 Government sale of animal feeds and fertilizers.**

24.2101 Definitions.

For the purposes of this chapter:

- (a) "Animal" means livestock that are used for food production.
- (b) "Animal feeds" means any material, raw or processed, used either in bulk or in small amounts for feeding and maintaining of animals.
- (c) "Chemicals" means weedicides, insecticides and fungicide and any other chemicals used for the elimination and control of weeds, insects and diseases harmful to crops and animals.
- (d) "Fertilizer" means any material (plantfood) which is used for the enrichment of the soil.
- (e) "Government" means American Samoa Government.
- (f) "Governor" means Governor of American Samoa or his authorized representative.
- (g) "Local farmers" means all those involved in American Samoa who cultivate land or crops or raise livestock for commercial purposes.

History: 1979, PL 16-27 § 2, amd 1982, PL 17-54 § 1.

Amendments: 1982 Section entirely amended, subsection (a) designation and text of subsections (b) and (c) deleted.

24.2102 Farm subsidy program-Administration.

The Governor shall designate the Director of Agriculture to administer the farm subsidy program whereby the government subsidizes 50 percent of the cost of animal feeds, fertilizers, and chemicals, to local farmers to stimulate local agricultural production. The fund shall continue to be handled as a special program item under the government budget and must be accounted for and reported under this status.

History: 1984, PL 18-26 § 2.

24.2103 Special eligibility requirements.

- (a) To continue eligibility for the subsidy provided under this act, a local farmer must cooperate with the designated government agency in the following areas:
 - (1) provide the agency with information on production statistics in the format prescribed by the Director of Agriculture: and
 - (2) follow approved farming practices recommended by the Director of Agriculture.
- (b) The Director of Agriculture shall adopt rules under the Administrative Procedure Act, 4.1001 et seq. to implement this section.

History: 1979, PL 16-27 § 3.

24.2104 Tax exemption.

Subsidies paid to local farmers under this chapter shall not be considered taxable income.

History: 1979, PL 16-27 § 4.

24.2105 Government sale of animal feeds and fertilizers.

The Director of Agriculture is responsible for the purchasing, stocking, and selling of animal feeds and fertilizers distributed by the government.

History: 1979, PL 16-27 § 1.

Chapter 22

COPRA FUND

Sections:

- 24.2201 Creation of fund.**
- 24.2202 Purposes.**
- 24.2203 Place of business.**
- 24.2204 Board of Directors.**
- 24.2205 Quorum.**
- 24.2206 Powers and duties of Director.**
- 24.2207 Officers-Compensation.**
- 24.2208 Chairman-Duties.**
- 24.2209 Secretary and Treasurer-Duties.**
- 24.2210 Inspection of books and account.**
- 24.2211 Rules and regulations-Standards of quality of copra.**
- 24.2212 Expenses of fund.**
- 24.2213 Surplus funds-Use.**
- 24.2214 Local managers.**
- 24.2215 Borrowing of money by fund.**

24.2201 Creation of fund.

There is created a nonprofit corporation to be known as the Copra Fund. It shall be operated for the mutual benefit of copra producers.

History: 1962, PL 7-24.

24.2202 Purposes.

The purposes of the Copra Fund are to:

- (1) promote and engage in any activity in connection with the production, grading, packing, processing, storing, shipping, warehousing, handling, and marketing of copra, and in the financing of such operations;
- (2) purchase, sell, or deal in copra;
- (3) borrow money to make advances to producers;
- (4) see, discount or borrow money upon any commercial paper or negotiable instruments, promissory notes, warehouse receipts, mortgages, or any other property or security owned or under the control of the copra fund;
- (5) act as the agent, representative or broker of any person, firm, or corporation in any of the

above activities;

(6) buy, hold and exercise all privileges of ownership of such real or personal property as may be necessary or convenient for the conduct and operation of any of the business of the copra fund;

(7) do each and every thing necessary, suitable, or proper in the judgment of the board of directors of the copra fund for the accomplishment of any of the purposes or obtainment of the objects enumerated in this section or which shall at any time appear conducive or expedient for the interests of the copra fund or the producers of copra, and to contract accordingly.

History: 1962, PL 7-24

24.2203 Place of business.

The principal place of business of the Copra Fund shall be in the village of Fagatogo. Branch offices may be located at other points in the discretion of the Board of Directors.

History: 1962, PL 7-24.

24.2204 Board of Directors.

The governing body of the Copra Fund shall be a Board of Directors consisting of the Director of Agriculture as chairman, the Secretary of Samoan Affairs as vice-chairman, the Director of Manpower Resources, the Director of Administrative Services, the President of the Development Bank, and one resident of Tutuila, to be appointed by the Governor.

History: 1964, PL 8-14.

24.2205 Quorum.

Four Directors shall constitute a quorum of the Board at all meetings.

History: 1962, PL 7-24.

24.2206 Powers and duties of Directors.

The Directors shall have the following powers and duties:

(1) to conduct, manage and control the affairs and business of the Copra Fund, including the establishing of the price to be paid to producers, and to make rules and regulations for the guidance of the officers and management of its affairs;

(2) to appoint and remove, at its pleasure, all officers, agents and employees of the Copra Fund, prescribe their duties, fix their compensation, and require from them, if advisable, security for faithful service;

(3) to make and enter into agreements for the sale, marketing, or consignment of copra:

(4) to select one or more banks to act as the depository of the funds of the Copra Fund and to determine the manner of receiving, depositing and disbursing of funds and the form of checks and the person or persons by whom the same shall be signed, with the power to change such banks and the person or persons signing the checks and the form thereof at will;

(5) to keep a complete record of all its acts and the proceedings of its meetings, and to prepare annually a full statement showing in detail the conditions of the affairs of the Copra Fund;

(6) to supervise all officers, agents and employees and see that their duties are properly performed:

(7) to install such a system of bookkeeping and auditing that each producer may know and be advised fully from time to time concerning the receipts and disbursements of the Copra Fund.

History: 1962, PL 7-24.

24.2207 Officers-Compensation.

(a) The officers of the fund shall be the chairman of the Board of Directors, a vice-chairman, a secretary, and a treasurer, together with any other administrative officers whom the Board of directors may see fit in its discretion to provide for by resolution entered upon the minutes.

(b) The compensation and tenure of all officers shall be fixed by the Board of Directors.

History: 1962, PL 7-24.

24.2208 Chairman-Duties.

(a) If at any time the chairman is unable to act, the vice-chairman shall take his place and perform his duties, and if the vice-chairman is unable to act, the board shall appoint a Director to do so.

(b) The chairman or such vice-chairman or Director shall:

(1) preside over all meetings of the Directors;

(2) subject to the advice of the Directors, direct the affairs of the Copra Fund;

(3) call the Directors together whenever necessary;

(4) sign, as chairman, all contracts, notes, and other instruments when so directed by the Board of Directors;

(5) discharge such other duties as may be required of him by the Board of Directors.

History: 1962, PL 7-24.

24.2209 Secretary and treasurer-Duties.

(a) It shall be the duty of the secretary to:

(1) keep a record of the proceedings of the meetings of the Board of Directors;

(2) receive and deposit all moneys of the Copra Fund, to be paid out only on checks drawn as provided in this chapter, and account for all receipts, disbursements, and balances on hand;

(3) discharge such other duties as pertain to his office or may be prescribed by the Board of Directors.

(b) It shall be the duty of the treasurer to take general charge of the funds of the Copra Fund, as directed by the Board of Directors.

(c) The secretary may be the same person as the treasurer; the treasurer need not be a natural person, but may be a corporation, and preferably a banking corporation.

History: 1962, PL 7-24.

24.2210 Inspection of books and accounts.

The books of the Copra Fund and such papers as may be placed on file by vote of the Board of Directors shall, at all times during business hours, be subject to the inspection of the Board or the government auditor.

History: 1962, PL 7-24.

24.2211 Rules and regulations-Standards of quality of copra.

The Board of Directors has the power to establish, revise, and amend from time to time rules and regulations by which each producer shall be governed with reference to the proper handling and shipping of copra, and to secure a proper grading and standard of quality.

History: 1962, PL 7-24.

24.2212 Expenses of fund.

All expenses of maintaining the Copra Fund, including, among other things, rent, salaries, taxes, insurance, office and inspection expense, building reserves, marketing, and all other expenses, shall be met, insofar as possible, from the profits of sales.

History: 1962, PL 7-24.

24.2213 Surplus funds-Use.

Any surplus over and above the actual expenditures and obligations of the Copra Fund may be invested, held in reserve, or used for the purchase of equipment, materials and supplies for the use or advantage of the copra producers of American Samoa. Any surplus in excess of \$60,000 must be distributed to the copra producers.

History: 1962, PL 7-24.

24.2214 Local managers.

The Board of Directors may, in its discretion, appoint a local manger who shall hold office at the pleasure of and on terms and conditions set by the Board of Directors. Any Director, officer, or other person may be elected as manager. The local manger shall perform such duties as may be directed by the Board of Directors.

History: 1962, PL 7-24.

24.2215 Borrowing of money by fund.

The Copra Fund shall have the power, on affirmative vote of at least 4 Directors, to borrow money for any corporate purpose, on open account or upon any assets of the Copra Fund, or any property not yet distributed to the producers, in such amounts and upon such terms and conditions as may from time to time seem to the Board of Directors advisable or necessary.

History: 1962, PL 7-24.

Chapter 23

CONSERVATION OF FLYING FOXES

Sections:

- 24.2301 Short title.**
- 24.2302 Policy.**
- 24.2303 Commercial hunting and exportation banned.**
- 24.2304 Private hunting regulated.**
- 24.2305 Administration of this chapter.**
- 24.2306 Violation-Penalty.**

24.2301 Short Title.

This chapter shall be known as the “Flying Foxes Conservation Act”.

History: 1986, PL 19-61 § 1.

24.2302 Policy.

It is the public policy of American Samoa and the purpose of this chapter to conserve and protect from extinction the population of the three species of flying foxes indigenous in American Samoa: the pe'a (*Pteropus tonganus*), pe'a vao (*Pteropus samoensis* Peale) and pe'ape'a (*Emballonura semicauadata*).

History: 1986, PL 19-61 § 1.

24.2303 Commercial hunting and exportation banned.

All commercial hunting or exportation of flying foxes is prohibited.

History: 1986, PL 19-61 § 1.

24.2304 Private hunting regulated.

Private hunting of flying foxes is regulated as follows:

- (1) flying foxes killed are for personal use only and may not be sold or exchanged for value;
- (2) hunting during daylight hours before 6:00 p.m. each day is prohibited.
- (3) shooting at roosts is prohibited;
- (4) reasonable bag limits, not to exceed 7, shall be established by rule; and
- (5) hunting is permitted only from 1 May to 31 July each year.

History: 1986, PL 19-61 § 1.

24.2305 Administration of this chapter.

(a) The Director of Marine and Wildlife Resources has the responsibility for the administration of this chapter.

(b) The Director is authorized and directed to:

- (1) design and conduct periodic censuses and other studies of flying fox populations to monitor the status and provide the basis for future management of the populations;
- (2) promulgate rules in accordance with 4.1001 et seq., not inconsistent with laws, as may be reasonably necessary and appropriate to establish bag limits on the private hunting of flying foxes, define the nurturing season of flying foxes, protect roosting areas and other areas of importance to flying foxes from disturbance, and otherwise accomplish the purposes of this chapter: and
- (3) exercise all other powers not inconsistent with laws or rules as may be reasonably necessary or incidental to administration of this chapter.

History: 1986, PL 19-61 § 1.

24.2306 Violation-Penalty.

Any person who violates any of the provisions of this chapter or any of the provisions of the rules promulgated pursuant to this chapter shall be guilty of a class A misdemeanor.

History: 1986, PL 19-61 § 1.